

A critical evaluation of CEDAW Committee jurisprudence and its
relevance to African women

by

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Summary

In the mini-dissertation, we consider the potential effectiveness of CEDAW in reaching its stated goal of eliminating discrimination against women.

We consider and analyse the potential impact of the Convention in the fight against inequality and discrimination against women, and the research examined CEDAW Committee decisions critically to find out its potential impacts and relevance to African women. This mini-dissertation analyses specific forms of discrimination in three selected African states and, found that: (1) women still suffer discrimination in access to education through low female enrolment and, the restriction on particular areas of study, (3) that in employment, women are discriminated against through inequality in payment, restriction of women from some sectors of the economy and; in lower opportunities for women as compared to men, (4) that in relation to politics and public life, women still are discriminated against and; they cannot easily access public office and are, underrepresented in parliament, cabinet and in the private sector, except in Rwanda where women are well represented, (5) that women are discriminated against in access to health care services including reproductive care which is characterized by lower female life expectancy, lower access to health care services especially in rural areas and; high mortality rate amongst female infants, (6) and that women in marriages and families are still not treated equally with men on issues of divorce proceedings, child support, polygamy and early marriage.

We discuss and analyse the instruments protecting women against discrimination at the global and regional levels. We illustrated that the instruments effectively protects women against discrimination but were, inadequately implemented or utilised by women. We concluded as follows; (1) that the instruments effectively protected women from discrimination in education, employment, health care services, family and marital life and; in politics and public life. The issue is the implementation of the instruments by states parties and, (2) that in terms of the Convention on the Elimination of all forms of Discrimination against Women, that the problem of reservations by states parties have greatly affected the effectiveness of the Convention. As to the CEDAW Committee jurisprudence, we discovered: (1) that the CEDAW Committee has done enough to protect women against discrimination in all spheres of life with groundbreaking decisions and; all that is required now is proper implementation of decisions, (2) that there are presently no communications to the CEDAW Committee from African women yet, (3) that most communications submitted to the Committee have been declared inadmissible for reasons ranging from non-exhaustion of domestic remedies to the facts occurring prior to the entering into force of the Optional Protocol in the state party complained against and, that most cases were lost on procedural errors, (4) that the Committee is very strong in cases of domestic violence and discrimination in access to health care services. In conclusion, the research identifies a number of weaknesses in the Convention and proposes a range of amendments that would facilities the use of the CEDAW Committee by African women. We also identified the implications of the CEDAW Committee jurisprudence on Africa.

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Acronyms

CEDAW	Convention on the Elimination of all forms of Discrimination a against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Right Rights
UN	United Nations
AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of a Child

Chapter One: Introduction

1.1 Introduction

Women constitute half of humanity and, continue to be discriminated against in all spheres of life. Since the first attempt at recognising women's rights by the United Nations in 1945, the organisation through the Commission on the Status of Women has attempted to counter a legacy of inequality between men and women. One of the latest attempts to undo the effects of centuries of untold discrimination and inequality was the enactment of the Convention on the Elimination of all forms of Discrimination against Women. The United Nations through the General Assembly adopted the Convention in 1979 and entered it into force in 1981. The Convention prohibits private and public discrimination against women, outlaws discrimination against women in all spheres of society. Also, the Convention calls on the states parties and all persons to, promote substantive equality and; the Convention provides for a Committee to receive states parties' reports on progress made in the implementation of the Convention.¹ Furthermore, a Protocol to the Convention was adopted in 1999 which provides for individual complaints procedure, whereby individuals can make complaints of violations against states parties to the CEDAW Committee. Discrimination against women is a major problem in Africa, with women lacking access to adequate health care services, access to employment opportunities, land, and educational opportunities. Also domestic violence continues to be perpetuated against women especially in the family as; women are abused physically, emotionally and financially.

The reason for choosing this topic is to examine the potential impact of the Convention in the fight against inequality and discrimination against women. The Convention on the Elimination of all forms of Discrimination against Women is a comprehensive document that seeks to promote equality between men and women. The Convention is implemented by a Committee which performs its work through receiving reports from states parties, examines complaints from individuals and conduct inquiry procedure but; this paper would examine states parties' reports, CEDAW Committee Concluding Observations on three selected African states parties and the individual complaints procedure by the CEDAW Committee. The African states parties (Nigeria, Rwanda and Egypt) were selected because they represent different legal systems in Africa. Furthermore, specific forms of discrimination against women in the three selected African states parties would be examined in chapter two. Chapter three would discuss instruments protecting women against discrimination while chapter four would examine cases decided by the CEDAW Committee and; also inequalities cases decided by the Human Rights Committee under the International Covenant on Civil and Political Rights. And in the conclusion, which is chapter five, recommendations would be proffered.

¹ Article 17 of CEDAW

1.2 Background to the Convention on the Elimination of all forms of Discrimination against Women and discrimination against women generally

The problem of discrimination against women is a worldwide phenomenon that is not peculiar to a particular region of the world. Sub-Saharan Africa remain the worst affected with unreported cases of discrimination in the education, health care and employment sectors, politics and family. The struggle for equality and non-discrimination against women is not new. The current debate on women's rights against discrimination could be traced to the Declaration on the Elimination of Discrimination against Women which culminated into the adoption of the Convention on the Elimination of Discrimination against Women in 1979. The Convention addresses the issues of non-discrimination against women in all its ramifications. A serious problem that has had a profound impact on the effectiveness of CEDAW is that most states parties express reservations concerning certain provisions which are against the objective of the Convention. Reservations to the provisions of the Convention by states parties adversely affect women's rights and prolong discrimination against them. Lesotho, Egypt and Libya have all expressed reservations to article 2 of the Convention on measures to eliminate discrimination while; Algeria expressed reservation to article 16 paragraph 1 of the Convention concerning the same rights and responsibilities during marriage. The Convention has also been criticised for 'denouncing motherhood and undermining the family',² and described as having 'no powers to enforce its decisions and that it's tyrannical'.³

However, CEDAW is relevant in a number of ways; 'in that the Convention addresses not discrimination on the basis of sex but discrimination against women' and; the Convention is comprehensive in its coverage of rights in that 'it explicitly guarantees equality in the enjoyment of civil and political, as well as economic, social and cultural rights'. The Convention also 'imposes explicit obligations on states parties in respect of discrimination by private parties, not just by the state or public officials'.⁴ The Convention established a Committee on the Elimination of Discrimination against Women, with the sole purpose of monitoring the progress made in the implementation of the Convention through, periodic reporting by states parties. However, the protection mechanism for women's rights established under the Convention was inadequate especially as states parties were expected to submit reports to the Committee towards the implementation of the rights contained in the Convention, which in itself is a weakness on the part of the Convention and, in 1999, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was adopted and provides for:

² D Reid 'the CEDAW Convention: its contribution today' in A Bayefsky et al American Society of International Law, Vol.94 April 5-8, 2000 197-203 (accessed 08 October 2010)

³ *ibid*

⁴ A Byrnes 'The Convention on the Elimination of all forms of Discrimination against Women' In W Benedek et al (ed) *The Human Rights of Women: International Instruments and African experiences* (2002)120

- ❖ **Individual complaint procedure:** This procedure allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received.⁵

The Committee on the Elimination of Discrimination against Women is the body of independent experts that monitors the implementation of the Convention on the Elimination of All forms of Discrimination against Women. The CEDAW Committee consist of 23 experts on women's rights. Countries who have become parties to the treaty are obliged to submit regular reports to the Committee on how the rights in the Convention are implemented. While in accordance with the Optional Protocol to the Convention, the Committee is mandated to receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee. This procedure is optional and only available where the state party has accepted it. The Committee on the Elimination of Discrimination against Women has rendered some useful pronouncements that effectively interpret the provisions of the Convention. The research would examine CEDAW Committee decisions critically to find out its potential impacts and drawbacks especially states parties compliance to decisions, examine the Concluding Observations of the Committee on the three selected African states, analyse the nature and scope of CEDAW Committee mandate, the relevance of the Committee decisions to African women and to what extent if any, can African women benefit from CEDAW Committee decisions.

1.3 Research questions

The paper would examine three questions in order to understand the scope and nature of discrimination against women in Africa:

- To what extent does national legislation and institutions protect women from discrimination?
- How effective is the CEDAW Committee jurisprudence in the fight against discrimination?
- How can CEDAW and jurisprudence from other treaty bodies be made more accessible and exposed to women in Africa?

1.4 Problem statement

This research would be inquiring into why despite enactment of legislation and adoption of series of institutions women especially in Africa still suffer from discrimination on account of their gender and sex? And why African women have so far not yet started utilising the treaty body mechanisms of CEDAW and other treaty bodies like the Human Rights Committee

⁵ Article 2 of the Protocol to CEDAW

under the CCPR? The reasons why African women have failed to utilize the Convention would be investigated and recommendations for reform would be proffered. The research would also attempt to understand specific forms of discrimination against women in Africa and; three African states chosen, because they represent different legal systems in Africa. The states are used here as case study to find out efforts by states at implementing the Convention.

1.5 Limitation of the study

The research shall be limited to three African states including Egypt, Nigeria and Rwanda because of the short period at my disposal and lack of resources. Research into these states is limited to library research, desk-top research and internet usage. However, inferences shall be drawn from other sub-Saharan African countries that have implemented the Convention.

1.6 Significance of Research

The purpose of this study is to examine the potential impact of the jurisprudence by the CEDAW Committee in the fight against discrimination in Africa and how African women can make use of the CEDAW Committee jurisprudence to eradicate discrimination in all spheres of life.

1.7 Research Methodology

The approach in this study would be descriptive, analytical and critical. The descriptive approach would be employed because there would be an overview of the existing situation with regard to the use of CEDAW in the fight against discrimination. The critical and analytical approach would be employed to evaluate CEDAW jurisprudence, the Convention and the extent to which the Protocol to the African Charter on Women, can adequately tackle discrimination against women in Africa.

Furthermore, intensive library research and desk-top literature based review would be employed. This would entail gathering and analysing available literature from the library, the internet etc. Primary and secondary sources of information would be used;

Primary sources of information would include:

- (a) Analysis of CEDAW, ICCPR, ICESCR, the African Charter and the Protocol to the African Charter on Women.
- (b) Furthermore, all relevant treaties will be examined.
- (c) Also the Concluding Observations of CEDAW Committee on the three selected African states, state party reports of three selected African states, general comments of the Human Rights Committee on CCPR and general recommendations of the CEDAW Committee, will all be analysed.

The secondary sources of information would be:

- (a) Textbook on discrimination against women in general and women in Africa, human rights and international law.
- (b) Journal articles on discrimination against women.
- (c) Reports from inter-governmental and non-governmental organisations.

1.8 Literature Review

There seems to be some sort of consensus that the CEDAW Committee and its subsequent decisions have not done much in alleviating the predicament of women with regards to discrimination against women because; the Committee cannot enforce its decisions against states and that states parties on their part, have failed to provide measures whether legislative or administrative to tackle the problem of discrimination against women. This view is supported by Ngaba, who is of the view that CEDAW has basically failed to solve the problem of discrimination against women.⁶ Neuwirth expresses the opinion that many states have legally entrenched explicit inequality between men and women in various domains such as citizenship and family law, through sex discriminatory laws. She suggests that governments must be held accountable and that ‘public pressure mobilized by the Beijing World Conference on Women and its aftermath has been more effective than the legal obligation of CEDAW in narrowing the gap of sex inequality’.⁷ The above view is also, supported by Ukhun and Inegbedion. They suggest that ‘the courts have not been firm in eliminating cultural prejudices against women and have rather displayed an attitude of prevarication’. According to them, the court can be more proactive on issues of women’s rights through the use of international instruments to override domestic legislation and government policies. They are also of the view that the adoption of the Protocol on Women to the African Charter by African leader may be a failure of CEDAW to address the cultural prejudices against African women.⁸ While CEDAW may have succeeded in Europe and America, in Africa according to them, has failed to eliminate the various forms of cultural discrimination against women. The African response to this problem was the adoption of the Protocol to the African Charter on Women. While Tongue is of the opinion that CEDAW does not solely address actions by the state or its agencies but also by private actors and that CEDAW obliges states to take all appropriate measures, including legislation to eliminate discrimination against women by any person, organisation or enterprise. She argues that

⁶ Sindiso Ngaba, Agenda no.27. Reproductive Rights 1995 81-89 <http://www.jstor.org/stable/4065976> (accessed 08 October 2010)

⁷ J Neuwirth ‘Inequality before the law: holding states accountable for sex discriminatory laws under the CEDAW and through the Beijing Platform for Action’ (2005) 18 *Harvard Human Rights Journal* 19-54

⁸ CE Ukhun & N Inegbedion ‘Cultural authoritarianism, women and human rights issues among the Esan people of Nigeria’ (2005) 5 no.1 *African Human Rights Law Journal* 129-147

CEDAW has been used successfully in Africa as a lobbying tool.⁹ According to Fayeeza, the Convention aims to achieve a society where women will be treated equally to men. A ‘society where oppressive customs and prejudices will be questioned and replaced by egalitarian forms of behaviour and its focus lies in according to women substantive equality’. She criticizes CEDAW for not imposing an obligation on state parties to act quickly or according to a time-table.¹⁰ We agree with the above view points because this is the reason why some of the CEDAW Committee decisions are yet to be enforced.

Furthermore, Vandenhole argues that CEDAW deals with one particular form of discrimination that is sex/gender discrimination and; that the CEDAW Committee has taken the broad approach of women’s rights rather than the more limited one of discrimination against women.¹¹ Discrimination against women according to him is ‘perpetuated by the survival of stereotypes and of traditional, cultural and religious practices and, beliefs detrimental to women’.¹² In addition, Oberleitner suggests that discrimination and violations of women’s rights range from restriction on women’s personal freedom of movement and deprivation, to direct violence involving cultural and traditional practice.¹³ Likewise, Tomasevski states that the prohibition of discrimination does not imply that no ‘differentiation should be made between people, but that such differentiation should be on the basis of objective and reasonable criteria, not on the ground of sex’.¹⁴ Gender discrimination according to her is so ‘firmly imbedded in the history of humanity that it is often not perceived as discrimination because women have been burdened with unpaid household work and absent from public life for so long and, this is deemed to be a natural state of things’.¹⁵ She suggests that governments undertake ‘direct action to ensure the observance of non-discrimination by all public authorities’ and ‘indirect action involving taking measures to ensure the acceptance and implementation of non-discrimination in areas where the states does not exercise direct control’.¹⁶ Gonsalves expresses the opinion that discrimination against women is caused by ‘deeply held attitudes, customs and beliefs about women’ and at times ‘judges do discriminate between men and women and consciously and; unconsciously

⁹K Tongue ‘Eliminating discrimination against women: the push for an international treaty’ (1998) 25 no.3 *Human Rights* 14-16

¹⁰ K Fayeeza ‘Convention on the Elimination of All Forms of Discrimination against Women’ (1995) 11 no.3 *South African Journal on Human Rights* 421-437

¹¹ W Vandenhole *Non-discrimination and equality in the view of the UN human rights treaty bodies* (2005) 87

¹² Human rights: discrimination against women, the Convention and the Committee fact sheet no.22 (UN): the Human Rights fact sheet series.

¹³ A Byrnes ‘Convention on the Elimination of All Forms of Discrimination against Women’ in G Oberleitner et al (eds) *Human rights of women: international instruments and African experiences* (2002) 129

¹⁴ K Tomasevski *Women and human rights* (1993) 44

¹⁵ *ibid*

¹⁶ *ibid*

reflect traditional and rigid attitudes towards them as they themselves are raised in male supremacist tradition'.¹⁷ He suggests that the 'attachment to stereotypical understanding leads to the continuation of sex discrimination on the part of the courts, society, family and friends'.¹⁸ Likewise, Otten argues that discrimination takes on the 'role of elevating one individual or group at the cost of lowering another' and that, sex discrimination affects women and society in general.¹⁹

According to Khutsoane, discrimination against women in Africa is caused by 'traditional attitudes which views women as subordinate to men and that; discrimination includes violence that is directed at a woman'.²⁰ Rebouche criticizes CEDAW in the context of land and employment rights noting that, the international instrument may not adequately address the ways in which African women seek income through farming and trade. According to her, 'discrimination that African women face in the informal sector is perpetuated by the link between law and custom, a complexity which the Convention seems to fail to address'.²¹ Likewise, Durojaye expresses the view that discrimination against women in Africa is often 'perpetuated by patriarchal tradition and discriminatory attitudes against women which serve as barrier to the enjoyment of equal rights'. He states that discrimination against women in Africa is 'sustained by male-oriented policies and structures and can be reduced through law reform accompanied by other reforms within the institutional structures that make up the legal system but, also within society itself'.²² Shalev argues that 'equality implies non-discrimination and that discrimination will amount to a violation of the right to equality' and; advises states to protect women against discrimination.²³ Limann blames discrimination against women in Africa on the governments which have not done enough to protect women through the adoption of legislative or other measures to give effect to their rights.²⁴ We totally agree with the views expressed by the above scholars, in that African leaders must show a serious commitment to the realization of the goals of the Protocol to the African Charter on Women's Rights and the Convention on the Elimination of all forms of

¹⁷ L Gonsalves *Women and Human Rights* (2001) 9

¹⁸ *ibid*

¹⁹ LA Otten *Women's rights and the law* (1993) 16

²⁰ B Khutsoane 'Gender-based violence and the Convention on the Elimination of All Forms of Discrimination against Women' in E Delpont (ed) *Gender-based violence in Africa: perspectives from the continent* (2009) 6

²¹ R Rebouche 'Labor, land and women's rights in Africa: challenges for the new protocol on the rights of women' (2006) 19 *Harvard Human Rights Journal* 235-256

²² E Durojaye 'Advancing gender equality in access to HIV treatment through the Protocol on the rights of women in Africa' (2006) 6 no.1 *African Human Rights Law Journal* 188-207

²³ C Shalev 'Rights to sexual and reproductive health: the ICPD and the Convention on the Elimination of all forms of Discrimination against Women' (2000) 4 *Health and Human Rights* 39

²⁴ L Hasila Limann 'Practices and rites related to widowhood and the rights of women in Africa: the Uganda experience' (2002) *Human Rights in Development* 187-223

Discrimination against Women by putting in place the necessary legislative and institutional measures to ensure its success of eliminating discrimination against women.

1.9 Proposed Chapters

Chapter One: It is an introductory chapter that covers the introduction to the research topic, the background to the research, research problem and questions, research methodology, significance of research, chapter overview and literature review.

Chapter Two: This chapter will discuss specific forms of discrimination against women in three selected African states and how the problem has adversely affected women in society. We identify different forms of discrimination against women and how it may influence women. We identify the problem of discrimination from examining available literature including government reports, non- governmental organisation reports and; the recent Concluding Observations of the CEDAW Committee on Nigeria, Egypt and Rwanda. We will consider whether the three selected African states have successfully implemented the Convention. We argue that the states have largely failed to implement the Convention and; that it is not a particularly effective tool in effecting societal change.

Chapter Three: This chapter examines the Convention on the Elimination of Discrimination against Women, African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Women's Rights, ICCPR, IESCR, and the various instruments by the United Nations promoting women's rights. We examine the Convention to find out its limits, benefits and where relevant, we refer to sections in the Convention that could have been better drafted and sections that may result in controversy. Where relevant we discuss the Convention's drafting history and the barriers to a more effective implementation of the Convention are also identified.

Chapter Four: In this chapter, CEDAW Committee jurisprudence will be examined briefly to assess the potential ability of the Convention to facilitate change in society. We also refer to and discuss the Human Rights Committee decisions on inequality between men and women in line with the topic of the research. As set out in the Convention, it is supposed to act as vehicle of societal change. Where relevant, we refer to conflicting decisions in the Committee jurisprudence. However, if potential complainants are unaware of the Convention, the Committee will be underutilised.

Chapter Five: Here, we will summarise the findings and recommendations and; offer suggestions aimed at improving the effectiveness of the Convention. Also ways by which African women can benefit from the Committee decisions and what is needed to change the status quo will be considered.

Chapter Two: Specific forms of discrimination against women in three selected African states

2.1 Introduction

Three African states will be examined in this chapter in relation to their implementation of the Convention on the Elimination of all forms of Discrimination against Women. Nigeria, Egypt and Rwanda will be examined to find out the efforts by the states at implementing the Convention and eliminating the problem of discrimination against women. The three selected African states including Nigeria, Egypt and Rwanda were chosen because they represent different legal systems in Africa. Nigeria as a state party to CEDAW practices Common law and Religious law including Sharia law which is practised in some northern states of Nigeria. Rwanda on the other hand, is also a state party to the Convention and practices the Belgian and German Civil Codes and, Customary law while; Egypt as a state party practices Civil law and Religious law based on Islamic law and the French Civil law system. Discrimination against women takes various forms including violence against women, discrimination in education, employment, public and political life, health care services, economic and social life, marriage and family relations and in trafficking and exploitation of women for prostitution. However; this chapter will examine specific forms of discrimination against women in family and marriage life, politics and public life, education, employment and in health care. These specific areas of discrimination against women were chosen because these areas more directly impact on women lives and; are interrelated in that, a woman without education cannot easily access adequate employment opportunities, health care services including reproductive care, and also cannot access decision-making positions or attain equality in marital and family life. In order to answer the question of discrimination against women in the three selected African states, government reports of the three selected African states, non-governmental organisation reports and scholarly reports will all be referred to from time to time in this chapter. And the most recent Concluding Observations of the CEDAW Committee on Nigeria, Egypt and Rwanda will also be examined in relation to the selected forms of discrimination against women. However, other countries may also be referred to from time to time to explain the effects of discrimination on women.

Discrimination against women according to the Convention mean:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²⁵

This infers that discrimination against women prevents the full enjoyment of women's rights in all fields including education, health care, employment, politics and family life. This is in line with the promotion of gender equality and the empowerment of women, which is one of the major goals of the Millennium Development Goals and; it is essential for the totally

²⁵ Article 1 of CEDAW

emancipation of women. According to Atkins and Hogget ‘the biological difference between the sexes governs women’s opportunities for education and paid employment’.²⁶ They argue further that ‘one of the basic factors causing inequality relates to the division of labour between the sexes and that the distribution of responsibilities between men and women restricts women to domestic sphere which in turn has led to women being treated as inferiors’.²⁷ Likewise, Ms. Xiaoqiao Zou in her address to the United Nations General Assembly in October 2010 observed that the ‘violations of women’s rights is based on patriarchal attitudes which are played out in the persistence of discriminatory laws, customs and practices’.²⁸ The above view is further shared by the new head of UN Women Michelle Bachelet, who states that ‘women do not have the same opportunities as men regarding the most essential human rights and that they are discriminated against’.²⁹ The above views support the position that, women continue to be discriminated against and that; the major causes of inequality between women and men can be traced to political, economic, social, cultural and historical factors. Women are exposed to harmful practices, domestic violence, trafficking and exploitation for prostitution, discriminatory policies on educational and employment opportunities and; underrepresented in politics and public life. Women still continue to be discriminated against today and where states provide laws to prevent the negative practice, the practical application of the laws enacted by states sometimes cause discrimination. The above position is supported by Ginwala who expresses the view that ‘women in practice do not have equal opportunity in education, in professions or in parliament’.³⁰ Domestic violence is a form of discrimination against women. According to the World Health Organisation, ‘violence affects millions of women in Africa and, that 50 per cent of women in Tanzania and 71 per cent of women in Ethiopia’s rural areas reported beatings or other forms of violence by husbands or other intimate partners’.³¹ Also, in a report by Amnesty International, it was stated that in South Africa, ‘about one women is killed by her husband or boyfriend every six hours’.³² The problem of discrimination against women is a daily reminder of what women experience and it is hoped, that states in Africa would fully implement the Convention.

²⁶ S Atkins & B Hoggett *Women and the law* (1984) 9

²⁷ *ibid*

²⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10434&LangID=E> (accessed 10 October 2010)

²⁹ <http://www.un.org/apps/news/story.asp?NewsID=35944&cr=women&cr1=> (accessed 10 October 2010)

³⁰ <http://www.unicef.org/pon95/wome0002.html> (accessed 10 October 2010)

³¹ *ibid*

³² <http://www.un.org/ecosocdev/geninfo/afrec/vol21no2/212-violence-against-women.html> (accessed 10 October 2010)

2.2 Specific forms of discrimination against women

Different forms of discrimination against women exist but this section will be restricted to discrimination against women in education, employment, health care services, politics and public life and; in family and marital life.

2.2.1 Discrimination against women in education

One of the basic human rights that have the effect of improving the quality of life of a woman is the right to education.³³ Access to education according to CEDAW must be ‘equal for men and women without discrimination because it has the effect of improving a woman’s standard of living and making her financially independent and politically active’.³⁴ According to Tomasevski, ‘educated women are more productive members of society and are in a better position to understand their families’ health and nutrition’.³⁵ Today, Women are still denied access to educational opportunities as compared to men. Girls are kept at home to ‘perform chores and those already in schools drop out because of lack of financial support, early marriage, pregnancy, religious and cultural reasons and; poverty’.³⁶ Discrimination against women is characterized by a literacy level that is lower for women as compared to men, low female enrolment rates, high female drop-out rates, and restriction on particular areas of study.³⁷ All these ultimately affect a woman’s right to education which is contrary to article 10 of CEDAW.

2.2.2 Discrimination against women in employment opportunities

Women on the ‘basis of equality with men have an inalienable right to work, same employment opportunities, free choice of profession and employment, equal benefits, remuneration and conditions of service’.³⁸ In Africa, ‘majority of working women are not paid for their work because they are not viewed as workers such as women in unpaid labour in households and; the informal and agricultural sectors. They are not treated as workers and therefore not entitled to social benefits.’³⁹ Discrimination against women in employment

³³The most important right that has a correlative effect; through quality education, women can become financially independent, attain political office and defend her rights as stipulated in the Convention.

³⁴ General Recommendation no.

³⁵ K Tomasevski *Women and human rights* (1999) 26

³⁶ K Webster ‘Socio cultural barriers to the education of Kenyan girls: gender stereotyping and sexual violence in secondary schools’ in O Nnaemeka & J Ezeilo (eds) *Engendering human rights: cultural and socio-economic realities in Africa* (2005) 179

³⁷ F Siddiqi & S Ranganathan *Handbook on women and human rights: a guide for social activists* part 1 (2001) 362

³⁸ A Byrnes ‘Convention on the Elimination of All Forms of Discrimination against Women’ in G Oberleitner et al (eds) *Human rights of women: international instruments and African experiences* (2002) 129

³⁹ K Tomasevski *Women and human rights* (1999) 44

which ultimately is tied to the education of the girl child is characterized by lower employment opportunities for women as compared to men, inequality in payment between men and women, restriction of women from some sectors of the economy, inequality in training and promotion opportunities and; dismissal based on pregnancy, marital status or maternity leave. This form of discrimination in employment negates the objective of the Convention and, is contrary to article 11 of CEDAW.

2.2.3 Discrimination against women in politics and public life

Women should on equal terms with men 'have the right to vote in all elections and public referenda and; be eligible for public office, be able to participate in the formulation of government policies and hold office at all levels of government'.⁴⁰ Women's participation in the public sphere has generally been low in Africa and; where they do participate, women are rarely found in decision-making positions. Women are poorly represented in 'parliament, cabinet, local government councils, senior public service positions, the private sectors and; important portfolios in committees in parliament'.⁴¹ Sripathi argues that the factors that lead to women under representation in politics and public life are:

Illiteracy and lack of education, discriminatory laws, limited or poor access to financial resources resulting in their lacking financial independence, the persistence of stereotypical attitudes, family and child-care responsibilities and the overall quality of the national political climates including traditional structures and working patterns of governments and the prohibitive amounts needed for seeking and holding public office.⁴²

Women under representation in government affect the growth of nation in that; women are unable to contribute their quota to the development of the state. Woman under representation in politics and public life is contrary to article 7 of CEDAW.

2.2.4 Discrimination against women in health and reproductive care

Health is the foundation upon which all that we ever will be is built and; goes beyond the physical, mental and social well being of an individual.⁴³ According to the World Health Organisation, 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction'.⁴⁴ And a violation of a woman's right to health including reproductive care affects the ability of that woman to enjoy

⁴⁰ S Ngaba 'CEDAW: Eliminating Discrimination against Women' (1995) 27 *Agenda* 81-89 <http://www.jstor.org/stable/4065976> (accessed 08 October 2010)

⁴¹ SADC Gender Monitor Issue 2 March 2001

⁴² V Sripathi *Realising the right to political participation for women: slow and steady wins the race* (2002) 75

⁴³ A Wakhweya 'Women's health and human rights in Uganda: to be or not to be, that is the question' in D Fox & N Hasci (eds) *The challenges of women's activism and human rights in Africa* (1999) 274

⁴⁴ J Chill & S Kilbourne 'The rights of the girl child' in M Agosin (eds) *Women, gender, and human rights: a global perspective* (2001) 158

the highest standard of health care. Women's right to health care services including reproductive care is inadequately catered for especially in rural areas where there is inadequate access to health care services.⁴⁵ Discrimination against women in healthcare is characterized by a mortality rate for female infants which is generally higher than that for males, lower female life expectancy, death rate which is higher partly due to very high maternal mortality rates and lower access to health care services, including family planning, pregnancy and adequate nutrition which is contrary to article 12 of CEDAW.

2.2.5 Discrimination against women in family and marital life

The Convention affirms the equality of human rights for women and men in marriage and family, in terms of entering marriage, choosing family names etc. Women in marriages are still not treated equally with men on issues such as; divorce proceedings, child support, polygamy and early marriage and; these problems adversely affect women. Polygamy according to Gender Links, a non-governmental organisation is 'evidently patriarchal and unfair'.⁴⁶ Most women still cannot transfer their family names to their children and, they are subordinated to the authority of their husbands.⁴⁷ Inequality between men and women in marriage and family life is contrary to article 16 of CEDAW.

2.3 Specific forms of Discrimination in three selected African states

2.3.1 Nigeria: The state party is a signatory to CEDAW with women accounting for 49.7 percent of the total population. The country was chosen because it practices Common law and Religious law including Sharia law in some northern part of the country. Discrimination against women still persists despite efforts at implementing the Convention. According to the 2006 US Department of State report, discrimination against women in Nigeria is deeply entrenched. 'Most women in the north are married by age 14 and Nigeria has one of the worst maternity death rates in the world. Women in the civil service must get permission to become pregnant or face losing their jobs'.⁴⁸ Female circumcision is still a practice in many parts of the country and only six percent of the members of parliament are women.⁴⁹

2.3.1.1 Discrimination against women in employment: In Nigeria, Section 42(1) of the 1999 Constitution guarantees equality in employment between men and women however, the

⁴⁵ C Raissiguier 'Women from the Maghreb and sub-Saharan Africa in France: fighting for health and basic human rights' in O Nnaemeka & J Ezeilo (eds) *Engendering human rights : cultural and socio-economic realities in Africa* (2005) 179

⁴⁶ http://www.sagoodnews.co.za/benchmarking/progress/sa_is_ranked_3rd_for_womens_representation_in_parliament.html (accessed 09 November 2010)

⁴⁷ F Banda *Women, law and human rights: an African perspective* (2005) 147

⁴⁸ www.ohchr.org

⁴⁹ CEDAW/C/NGA/6 Consideration of reports submitted by States parties under Article 18 of CEDAW, the Sixth Periodic Report on Nigeria held on 5 October 2006

ratio of men to women employed in the formal sector is still in favour of men. While some legislation discriminate against women; Section 55(1) and 56 (1) of the Labour Act Cap 196 of the Laws of the Federation 2004 prohibits the employment of women at nights and in underground works. Also, under the Nigeria Police Regulation, women are expected to be unmarried at the time of enlistment into the police unlike their male counterparts⁵⁰ contrary to article 11 of CEDAW. And the unemployment rate is higher for women than men in Nigeria.

2.3.1.2 Discrimination against women in politics and public life: In relation to politics in Nigeria, Section 40 of the Constitution of 1999 guarantees to all citizens the rights to vote and to be voted for while; Section 77(2) of the Constitution allows every citizen to aspire to any elective post without distinction. Also, there is a National Gender Policy that allows for 35 percent quota to women in all decision making positions. However, although women constitute 49.7 per cent of the national population, women are still inadequately represented in the National Assembly, State Houses of Assembly and in Local Councils. At the federal cabinet, women constitute 18 percent; in the Senate 4 out of 109 members are females while 21 of the 360 in the House of Representatives are women.⁵¹ Women are still grossly underrepresented in politics and in public life in Nigeria, contrary to article 7 of CEDAW.

2.3.1.3 Discrimination against women in education: In Nigeria, Section 18 of the Constitution of 1999 provides for the right to education for everyone, Section 15(1) of the Child Rights Act 2003 provides for free compulsory education while; the Universal Basic Education Act 2004 provides for compulsory free education until junior secondary level. The laws provided however lack effective enforcement and monitoring and; is restricted to few states in Nigeria. There exist high primary school enrolment rate for boys than girls especially in northern Nigeria due to religious reasons.

2.3.1.4 Discrimination against women in family and marital life: In relation to equality in marriage and family, discriminatory practices and provisions exist in the civil, religious and customary laws dealing with the age of marriage, consent in marriage, inheritance, maintenance, female genital mutilation, divorce, widowhood practices and polygamy. Section 55 (1) (d) of the Penal Code Law endorses wife battery as chastisement and equates the relationship of husband and wife with that of master and servant. The Child Rights Act 2003 has not been enacted into law in all states of the federation though; Section 21 of the Act rose the minimum age for marriage to 18 years for all sexes.

2.3.1.5 Discrimination against women in health and reproductive care: Section 17 (3) (c) of the 1999 Constitution provides for the right to health care services. Nigeria however, has one of the highest maternal mortality rates in Africa and infant mortality stood at 100 per

⁵⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/104/28/PDF/G0210428.pdf?OpenElement> Concluding Observations of the Committee on the Elimination of Discrimination against Women on Nigeria held at the Forty- First Session between 30 June to 18 July 2008 (accessed 10 October 2010)

⁵¹ The Nigeria CEDAW NGO Coalition Shadow Report submitted to the 41st Session of the CEDAW Committee.

1,000 live births in 2003. Abortion is prohibited under the Penal and Criminal Codes except to save the mother's life and; the use of modern family planning methods remains low at 13 percent.⁵² Rural areas still lack access to adequate health care services as compared to urban areas and women are more vulnerable to HIV than their male counterparts.⁵³

2.3.2 Egypt: Egypt as a signatory to CEDAW practices Civil law and Religious law based on Islamic law and the French Civil law system.

2.3.2.1 Discrimination against women in family and marital life: In Egypt, women who seek divorce can only obtain it by forgoing alimony and a return of the dowry under Law No.1 of 2000 which is discriminatory against women. The responsibility for child rearing is still the primary responsibility of the woman and; child support allowance in practice is granted to a man as head of the family contrary to the Convention.⁵⁴ In Egypt, early marriage and polygamy are practised especially in rural areas despite the adoption of Law No.126 of 2008 which rose the age for marriage from 16 to 18 years for both males and females.

2.3.2.2 Discrimination against women in health and reproductive care: In Egypt, there is limited access to reproductive and sexual health services especially in rural areas. Emergency contraception is generally not provided contrary to general recommendation no.24 and maternal mortality rate stood at 55 per 100,000 live births in 2008.⁵⁵

2.3.2.3 Discrimination against women in employment: In Egypt, the principle of equal remuneration for men and women for work of equal value is not recognised by legislation and women mostly in the informal sector are not entitled to social security. The Maternity Protection Law entitles women working in the public sector to a period of 3 months paid leave while women in the private sector have no leave. And the largest proportions of women are employed in the informal sector and; they are not protected by legislation.⁵⁶

2.3.2.4 Discrimination against women in education: In Egypt, gender gap favouring males exist and gender segregation in students' choice of field of education continues to exist contrary to article 10 of the Convention. Although article 18 of the Constitution guarantees compulsory education at the primary stage and; article 8 also guarantees equal opportunities for all citizens, illiteracy rate for women is 63 percent while male rate is 38 percent.

⁵² Center for Reproductive Rights 'Broken promises: human rights, accountability and maternal death in Nigeria 26

⁵³ http://o-www.who.int.innopac.up.ac.za/making_pregnancy_safer/countries/nig.pdf

⁵⁴ Concluding Observations of the Committee on the Elimination of Discrimination against Women on Egypt held at the Forty-fifth Session between 18 January to 5 February 2010

⁵⁵ IBFAN-GIFA recommendations to CEDAW regarding maternal health and work-related issues at the 45th session held in January 2010

⁵⁶ Second Shadow Report for the CEDAW Coalition Egypt 2009 by the Egyptian Association for Community Participation Enhancement

2.3.2.5 Discrimination against women in politics and public life: The state party in a recent amendment to its Election Law established a quota of 64 seats for women in the People's Assembly (lower house). However, parliamentary women's representation currently stands at 2 percent according to the 2005 elections in the People's Assembly and 7 percent for the Shura Council. Women voters currently stand at 39.8 percent with the rate of women's participation in the local councils at 4 percent.⁵⁷ There still exists underrepresentation of women in public and in decision-making positions in Egypt.⁵⁸

2.3.3 Rwanda: Rwanda as a state party ratified the Convention in 1980 and has a women population of 52.2 percent. The country practices the Belgian and German Civil Codes and Customary law.

2.3.3.1 Discrimination against women in politics and public life: Article 8(3) of the Constitution of 2003 recognises the right to vote while; article 45 of the Constitution recognises equal rights for all without distinction to public positions. And a quota of 30 percent in all the bodies of decision making is ensured by the Constitution.⁵⁹ At parliament, women make up to 51 per cent. However, women are still underrepresented in local public administration and in senior managerial post in the private sector.

2.3.3.2 Discrimination against women in education: Article 40 of the Constitution recognises the right of all persons to education while; article 35 of the Constitution makes education in public schools compulsory and free until junior secondary level.⁶⁰ However, there still exist low enrolment rate for girls in secondary and higher education and; the high dropout rate of girls caused by traditional attitudes and early pregnancies continue to persist.

2.3.3.3 Discrimination against women in employment: Articles 12 and 84 of the Labour Code prohibits any form of discrimination in employment, and promotes equality of treatment and payment while; articles 71 and 72 of the Labour Code guarantees the right of every worker to paid leave. There is a policy of positive discrimination in favour of women in public institutions in Rwanda. However, there is still reluctance on the part of some private institutions to employ expectant mothers and; there exist high unemployment and underemployment rates for women in both the private and public sector in comparison with men and the concentration of women in low paid jobs particularly in agriculture.

⁵⁷ A Marei 'Critical issues identified' by the Egyptian NGOs CEDAW Coalition to the CEDAW Committee Pre-session held between 10 to 14 November 2008

⁵⁸ The Shadow Report on the Status of Egyptian Women in matters of personal status and forms of violence against women according to CEDAW Convention presented to the CEDAW Committee by the Center for Egyptian Women's Legal Assistance

⁵⁹ Combined Fourth, Fifth and Sixth Periodic Reports on Rwanda submitted to the Committee on the Elimination of Discrimination against Women held on 19 December 2007 CEDAW/C/RWA/6

⁶⁰ Concluding Observations of the Committee on the Elimination of Discrimination against Women on Rwanda held at the Forty-third Session between 19 January to 6 February 2009

2.3.3.4 Discrimination against women in health and reproductive care: The state party has introduced community insurance schemes to improve women's access to health care services. However, the maternal mortality rate remains high at 750 deaths per 100,000 live births owing to lack of access to obstetric services and many women in particular in rural areas give birth at home and; abortion is a punishable offence under Rwandan law.⁶¹ Women in rural areas do not enjoy their rights to health care services in comparison with women in urban areas.

2.3.3.5 Discrimination against women in family and marital life: Article 26(1) of the 2003 Constitution recognises only monogamous marriage and accord to both males and females equality in marriage and at the dissolution.⁶² In Rwanda, the minimum age for marriage is 21 years for both sexes. However, inequality still exists between the sexes in marriage and family relations. By virtue of article 110 of the Family Code, fathers must register the birth of a child and the mother may do so if the father is unable or absent. And men are treated as the head of the family by virtue of article 206 of the Family Code.

2.4 Conclusion

Women continue to endure discrimination in accessing employment opportunities, health care services, and public office, in education and in family. The research attempted to look into specific forms of discrimination in three African states and; discovered that the practice of discrimination continue to persist. The right to health care entails the enjoyment of the highest standard of health but, women still cannot easily access health care services including family planning, pregnancy and nutrition which results in high mortality rate for female infants, low female life expectancy contrary to article 12 of CEDAW. Access to education must be equal for men and women without distinction however, discrimination against women in education exist and; is characterised by low female enrolment rates, high female dropout rate and restrictions on particular fields of study which is contrary to article 10 of CEDAW. Likewise, access to employment opportunities is an alienable right that everyone is entitled to without distinction which; entails access to same employment opportunities, free choice of profession, equal remuneration and condition of service. Discrimination against women in employment is characterized by unequal payment between men and women and in the restriction of women from some sectors of the economy contrary to article 10 of CEDAW. Furthermore, women and men on equal terms have the right to vote and hold office at all levels of government but, women continue to be underrepresented in politics and in the public life of a country contrary to article 7 of CEDAW. Women and men must equally be treated in marital and family matters however, inequality still exist in divorce proceedings, child rearing, child marriage and polygamy which adversely affect women and it is contrary to article 16 of CEDAW.

⁶¹ Rwanda NGO Shadow Report on the Convention on the Elimination of all forms of Discrimination held at the 43rd Session prepared by M Beata et al on January 5 2009

⁶² *ibid*

In relation to the selected African states, women are still discriminated against in the different spheres of life. In Nigeria, women still suffer discrimination in employment, are underrepresented in politics, girls especially in northern Nigeria are still behind in terms of enrolment at schools and; the rural areas lack basic health care services as compared to urban areas. Egypt is a signatory to CEDAW and the state, fixed the minimum age for marriage at 18 years and compulsory education at primary level is guaranteed by the state party. However, women continue to suffer discrimination in divorce proceedings. Furthermore, there exist early marriages amongst young girls, polygamy in rural areas, limited access to health care services, inequality in remuneration between men and women and under representation in politics and public life. Rwanda practises the Belgian and German Civil Codes and, customary law. In Rwanda, the right to vote and hold positive position is recognised by the Rwanda Constitution and, women make up 51 percent of parliament. Compulsory free education until junior secondary level is guaranteed and public discrimination in favour of women in public institutions is recognised and; monogamous marriage is the only form of marriage recognised by the state party with the minimum age for marriage at 21 years for both sexes. However, women are still underrepresented in local administration, in secondary and higher education with high dropout for girls and; high unemployment and high maternal mortality rate still persist. In conclusion, the reviewed states have not adequately implemented the CEDAW Convention in that; the very objective of the Convention is yet to be achieved. Discrimination still persists in education, employment, health care, and politics and, in family. States must create measures to eliminate discrimination against women in all areas of life.⁶³

⁶³ M Brandt & J Kaplan 'The tension between women's rights and religious rights: reservations to CEDAW by Egypt, Bangladesh and Tunisia' (1995-1996) 12 no.1 *Journal of Law and Religion* 105-142

Chapter Three: Instruments protecting women against discrimination

3.1 Introduction

This chapter will examine the instruments protecting women against discrimination at the global and regional levels in the areas of education, employment, health care, family and public life. At the global level:

- ❖ the United Nations Charter,
- ❖ International Covenant on Civil and Political Rights,
- ❖ International Covenant on Economic, Social and Cultural Rights,
- ❖ Convention on the Political Rights of Women,
- ❖ Equal Remuneration Convention,
- ❖ Convention on the Rights of the Child,
- ❖ Convention on the Nationality of Married Women,
- ❖ Convention against Discrimination in Education,
- ❖ Convention concerning Discrimination in respect of Employment and Occupation,
- ❖ Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages and,
- ❖ The Convention on the Elimination of all forms of Discrimination against Women will all be examined in relation to the selected areas of discrimination against women.

In analysing the Convention on the Elimination of all forms of Discrimination against Women, the general recommendations of the Committee on the Elimination of Discrimination against Women in relation to articles 10,11,12,13 and 16 will be examined and; decisions of communications by the CEDAW Committee in relation to these articles will also be discussed. At the regional level:

- ❖ the Charter of the Organisation of African Unity,
- ❖ Constitutive Act of the African Union,
- ❖ African Charter on Human and Peoples' Rights,
- ❖ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and
- ❖ The African Charter on the Rights and Welfare of a Child will all be examined.

The African Charter on Human and Peoples' Rights will specially be examined in relation to the selected areas of discrimination and analysed using state party reports on Nigeria, Egypt and Rwanda to the African Commission on Human and Peoples' Rights and; decisions of communications by the ACHPR in relation to areas of discrimination in health care, education, family, employment and political life will be examined.

Discrimination against women usually occurs in the family, community and in the state and; instruments adequately protecting women from all forms of discrimination is needed to combat the incidence of discrimination. Generally, the Convention on the Elimination of all forms of Discrimination against Women represents the most comprehensive instrument in the

fight against discrimination. The Convention's underlying principle is that 'discrimination against women is incompatible with human dignity and constitutes an obstacle to the full realization of the potentialities of women'.⁶⁴ The Convention on the Elimination of all forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. As of 21 September 2010, there are 186 States parties to the Convention.⁶⁵ However, the United States though signed the document in 1980 through President Jimmy Carter; the country has not yet ratified the document. According to Cohn:

The country's policy of exceptionalism in its quest to maintain its position as the unchallenged superpower, its support of policy that defines human rights in terms of civil and political rights but not economic, social and cultural rights and; its support for corporations which are the backbone of US capitalism from having to enact equality provisions' greatly influences its decision not to ratify the Convention.⁶⁶

Also Sudan, Iran and Somalia are not parties to the Convention because these countries believe that the Convention goes against their religious beliefs.

The Convention 'contains guarantees of equality and freedom from discrimination by the state and by private actors in all areas of public and private life'.⁶⁷ It provides for 'guarantees of freedom from discrimination on the ground of sex and; requires states parties to ensure that women enjoy equality in the fields of civil and political rights, as well as in the enjoyment of economic, social and cultural rights'.⁶⁸ The preamble advocates for, 'the recognition 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'.⁶⁹ The Convention defines discrimination against women in article 1 as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The Committee on the Elimination of Discrimination against Women states that, 'discrimination includes gender-based violence and, that it is not restricted to action by or on

⁶⁴Edward Lawson Encyclopaedia of Human Rights 2nd edition (1996)

⁶⁵ www.ohchr.org

⁶⁶ M Cohn 'Resisting equality: why the U.S refuses to ratify the Women's Convention' *Thomas Jefferson Law Review* 27 *T Jefferson L Rev.* (2004-2005) 15-26 http://heinonline.org/Hoi-Page?handle=hein.journals/tjeflr27&div=88g_sent=1&collection=journals

⁶⁷A Byrnes 'Convention on the Elimination of All Forms of Discrimination against Women' in G Oberleitner et al (eds) *Human rights of women: international instruments and African experiences* (2002) 129

⁶⁸ *ibid*

⁶⁹ Paragraph 4 of the Preamble to CEDAW

behalf of governments but; that states may also be responsible for private acts if they fail to act with diligence'.⁷⁰ Article 1 of CEDAW basically means that discrimination against women entails any restriction which undermines a woman's rights in any area of life whether private or public. Women whether married or not have the same rights with men and; are entitled to all the basic rights without distinction whether civil, political or economic rights.

Likewise, article 2 outlines a number of measures that governments can take to implement the Convention's goals, including embodying 'the principle of the equality of men and women in national constitutions or other appropriate legislation,' adopting 'appropriate legislative and other measures, prohibiting all discrimination against women,' establishing 'legal protection of the rights of women on an equal basis with men,' refraining 'from engaging in any act or practice of discrimination against women,' taking all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise and using legislation as a means to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women and repealing 'all national penal provisions which constitute discrimination against women'. This infers that 'all forms of public and private discrimination are covered by the Convention'.⁷¹ States parties to CEDAW must adopt legislative and other measures to tackle discrimination against women in their territories. The states parties to the Convention in article 3 guarantee that they 'shall take in all fields, all appropriate measures, including legislation, to ensure the full development and advancement of women'. The Committee in its general recommendations states that articles 2 and 3 'establishes a comprehensive obligation to eliminate discrimination in all its forms'.⁷² Discrimination against women can be eliminated by states parties through respecting, protecting, promoting and refraining from violating women's rights in all spheres of life.

Article 4 declares that 'temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention'. The Committee in interpreting article 4(1) advocates that 'states parties should make more use of temporary special measures such as positive actions, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment'.⁷³ The use of temporary special measures would definitely advance the integration of women into politics, education, employment and economy. Article 5 requires that measures be taken to 'modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and custom and; all other practices which are based on the idea of the inferiority or the superiority of, either of the sexes or on stereotyped roles for men and women'. The Committee observed that:

⁷⁰ General recommendation no.19 paragraphs 6 and 9

⁷¹ A Byrnes 'Convention on the Elimination of All Forms of Discrimination against Women' in G Oberleitner et al (eds) *Human rights of women: international instruments and African experiences* (2002) 129

⁷² Paragraph 10

⁷³ General Recommendation No.5

Traditional attitude by which women are regarded as subordinate to men perpetuate practices that involves violence such as family violence, forced marriage, female circumcision and that such practices may justify gender-based violence which in turn deprives women of the equal enjoyment of their human rights and fundamental freedoms and the consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities and these attitudes also contribute to the commercial exploitation of women as sex objects.⁷⁴

Traditional attitudes by which, women are treated as inferior or subordinate to men creates a sense of inferiority in women which in turn encourages violence against them whether in the family, community or by the state and; this manifests in women's low participation in politics, low illiteracy rate and in the sexual exploitation of women.

Article 6 requires that the states parties to the Convention should suppress all forms of trafficking in women and the exploitation of women for prostitution. The CEDAW Committee expresses the view that:

Poverty and unemployment increase the opportunities for trafficking in women and that sexual exploitation in the form of sex tourism, recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign national and that these practices are incompatible with the equal enjoyment of rights by women, and forces many women including young girls into prostitution and they need the equal protection of laws against rape and other forms of violence.⁷⁵

Poverty and unemployment amongst women greatly contributes to women trafficking in most parts of the world and Africa in particular. Women are trafficked into other countries for; prostitution, as domestic workers and into forced marriages which greatly affects their right to human dignity and respect. Article 7 addresses the elimination of discrimination against women 'in the political and public life of the country'. Articles 8 and 9, respectively, require states parties to ensure that women have the opportunity to represent their country at the international as well as having equal rights with men regarding their own nationality and, in the nationality of their children. The Committee on the Elimination of Discrimination against Women in interpreting article 8 recommends that 'state parties should ensure to women on equal terms with men the opportunities to represent their government at the international level and to participate in the work of international organisations'.⁷⁶ Likewise, the Committee under general recommendation no.21 argues that 'nationality is critical to full participation in a society and that without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and; may be denied access to public benefits and a choice of residence'.⁷⁷ Women should as of right, be able to represent their countries at international functions and; have the right to retain their nationality.

⁷⁴ General Recommendation No.19

⁷⁵ General Recommendation No.19 paragraphs 13, 14, 15

⁷⁶ General Recommendation No.8

⁷⁷ General Recommendation No.21

Article 10 deals with equality in the field of education, article 11 covers the area of employment and; article 12 guarantees access to health care without discrimination including services associated with pregnancy. Article 13 guarantees equality in areas of economic and social life while; article 14 provides that ‘states parties shall eliminate discrimination against women in rural areas and ensure to them the right to have access to social security, agricultural credit and loans’. The Convention contains guarantees of equality in all matters relating to marriage, family relations and equality before the law and; it is provided for in articles 15 and 16 respectively. However, a serious problem that has had a profound impact on the effectiveness of CEDAW is that most; states parties express reservations concerning certain provisions which are against the objective of the Convention. Also, the Convention has also been criticised for ‘denouncing motherhood and undermining the family’,⁷⁸ and described as having ‘no powers to enforce its decisions and that it’s tyrannical’.⁷⁹ CEDAW on the other hand, is relevant in a number of ways; ‘in that the Convention addresses not discrimination on the basis of sex but discrimination against women’ and the Convention is comprehensive in its coverage of rights in that it explicitly guarantees equality in the enjoyment of civil and political, as well as economic, social and cultural rights. The Convention also ‘imposes explicit obligations on states parties in respect of discrimination by private parties, not just by the state or public officials’.⁸⁰ In relation to the Convention, there should be an amendment to article 28 of CEDAW on reservations to the Convention. Most reservations to the Convention are incompatible with the objective of the Convention and the Convention provides no specific procedure for determining incompatibility. Also, there should be an amendment to Article 20 of the Convention and the meeting time of the Committee must be increased to accommodate its cumbersome functions.

3.2 Global Instruments

Internationally, the instruments that protect women from discrimination can be traced to the Charter of the United Nations (1945), which in its preamble ‘reaffirms faith in fundamental human rights, in the dignity and worth of the human person and; in the equal rights of men and women’. The Charter states amongst its purpose, the development of friendly relations among nations based on respect for the principle of equal rights⁸¹ and in the promotion of ‘respect for human rights and for fundamental freedoms for all without, distinction as to sex’.⁸² Furthermore, the Charter provides that ‘the United Nations shall place no restrictions

⁷⁸ D Reid ‘the CEDAW Convention: its contribution today’ in A Bayefsky et al American Society of International Law, Vol.94 April 5-8, 2000 197-203 (accessed 08 October 2010)

⁷⁹ *ibid*

⁸⁰ A Byrnes ‘The Convention on the Elimination of all forms of Discrimination against Women’ In W Benedek et al (ed) *The Human Rights of Women: International Instruments and African experiences*(2002)120

⁸¹ Article 1 paragraph 2 of the United Nations Charter.

⁸² Article 1 paragraph 3 of the UN Charter. The Charter of the United Nations was signed on 26 June 1945 at San Francisco and entered into force on 24 October 1945.

on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs'.⁸³ Likewise, in articles 55 and 56, the United Nations promises 'to promote universal respect to and observance of human rights and fundamental freedoms for all without distinction as to sex'.⁸⁴ This clearly shows the intentions of the United Nations of promoting equality without discriminating against women.

Likewise, the International Covenant on Economic, Social and Cultural Rights (1966) provides in article 2 paragraph 2 that states parties guarantees the rights in the Covenant without discrimination while; article 3 provides for the equality of rights between men and women. Article 6 recognises the right to work and; article 7 acknowledges the right of everyone to the enjoyment of just and favourable conditions, including equal remuneration for equal work without distinction and, the right to equal opportunity to promotion in employment.⁸⁵ Article 9 acknowledges the right of everyone to social security, including social insurance and; article 10 advocates equality in marriage especially the right to freely enter into marriage. Furthermore, article 12 recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and; article 13 provides for the right to education. In the same vein, the International Covenant on Civil and Political Rights (1966)⁸⁶ in article 2 paragraph 1 provides that, 'states parties undertake to respect and ensure to all individuals without distinction of any kind' the rights contained in the Covenant and; article 3 ensures the equal rights of men and women to the enjoyment of all rights set in the Covenant. The Covenant provides for the equal treatment of men and women in all spheres of life without discrimination of any kind. Article 23 guarantees equality of rights between men and women in marriage and at its dissolution while; article 25 provides for equality of rights for men and women in access to the political and public life of a nation.

Similarly, the Convention on the Political Rights of Women (1952) guarantees women the right to access political office without discrimination. Article 1 of the Convention guarantees women's right to vote in all elections on equal terms with men, article 2 states that 'women shall be eligible to all publicly elected bodies' and; article 3 provides that 'women are entitled to hold public office and to exercise all public functions'. This clearly provides that women have the right to vote and be voted into political offices at any level of government. Also, the Equal Remuneration Convention (1951) in article 2 guarantees equal remuneration for men and women workers, for work of equal value. The Convention on the Nationality of Married Women (1958) guarantees married women, the right to retain their nationality during marriage and at its dissolution. While in the Convention on the Rights of the Child (1989), states parties 'undertake that both parents have common responsibilities for the up bring and

⁸³ Article 8 of the UN Charter

⁸⁴ Article 55 (c) of the United Nations Charter

⁸⁵ Article 7, paragraphs (a) (I) and (c) of ICESCR

⁸⁶ Adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976

development of the child. The Convention against Discrimination in Education (1960) affirms equality of rights between men and women in access to education. Also, in the Convention concerning Discrimination in respect of Employment and Occupation (1958), states parties in article 2 undertakes to ‘practice equality of opportunity and treatment in respect of employment and occupation with a view to eliminate any discrimination’. While the Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages (1962) guarantees that marriages between men and women must be freely and equally entered into.

The Convention on the Elimination of all forms of Discrimination against Women (1979) on the other hand, provides in article 7 for the elimination of discrimination against women in the political and public life of the country. The article guarantees to women on equal terms with men, the right to vote and be eligible to all public elected bodies. Furthermore, women have the right to participate in formulating government policies and its implementation. In interpreting article 7, the Committee held that ‘states parties are obliged to take all appropriate measures to eliminate discrimination against women in politics and public life and to ensure that they enjoy equality with men in politics and public life.’⁸⁷ Article 10 of CEDAW deals with equality of men and women without discrimination in the field of education and; the Committee in analysing the article held in *A.S vs. Hungary* that the state party violated article 10 (h) of the Convention by not properly obtaining the author’s consent and educating the author on her rights.⁸⁸

Article 11 covers the area of employment and, states parties ‘undertake to take all appropriate measures to eliminate discrimination against women and; to ensure equality of men and women through the right to work, same employment opportunities, equal remuneration, free choice of profession and social security’. The Committee while considering article 11 (c),(d) and (e) held that a ‘high percentage of women in the states parties work without payment, social security and social benefits and; affirms that unpaid work constitutes a form of women’s exploitation that is contrary to the Convention’.⁸⁹ By virtue of General Recommendation 19, the Committee express the view that ‘equality in employment can be seriously impaired when women are subjected to gender-specific violence such as sexual harassment in the workplace which is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion or when it creates a hostile working environment’.⁹⁰ In the communication of *Karen Tayag Vertido vs. the Philippines*, the Committee held that the state party failed to protect the author’s right to work.⁹¹ Also, in the communication of

⁸⁷ General Recommendation no.23 Paragraph 7

⁸⁸ Communication no.4/2004

⁸⁹ General Recommendation no.16

⁹⁰ General Recommendation no.19 Paragraphs 17 and 18

⁹¹ Communication no.18/2008

Kayhan Vs Turkey, the author, a school teacher and a national of Turkey, claims to have been discriminated against when she was dismissed from her employment at a state school for refusing to take off her headscarf while at work and; that the state party allegedly violated her right to work.⁹² The author claims that the state violated article 11 of CEDAW. The communication was held inadmissible by the Committee because the author failed to exhaust domestic remedies.

Article 12 addresses the elimination of discrimination against women in the field of health care in order to ensure on a basis of equality of men and women, access to health care services including those related to family planning, pregnancy, confinement and post-natal period. The Committee in interpreting article 12 held that ‘access to health care including reproductive health is a basic right under CEDAW’⁹³ and that ‘violence against women put their health and lives at risk and; that traditional practices perpetuated by culture and tradition are harmful to the health of women such as dietary restrictions for pregnant women, preference for male children and female genital mutilation’.⁹⁴ The Committee further expresses the view, that ‘measure to eliminate discrimination against women is considered to be inappropriate if the health care system lacks services to prevent illness specific to women’.⁹⁵ In the communication of A.S vs. Hungary, the author represented by the European Roma Rights Centre and the Legal Defence Bureau for National and Ethnic Minorities brought a case against Hungary claiming that the author had undergone forced sterilisation when she came into a state hospital for an emergency caesarean section to remove her dead foetus and; alleges that the state violated article 12 of CEDAW.⁹⁶ The Committee found the communication admissible and held the state party in violation of the author’s right to health care.

Furthermore, article 16 of the Convention guarantees equality of men and women in all matters relating to marriage and family relations including the right to enter into marriage, freely choose a spouse and; same rights and responsibilities during marriage and at its dissolution. In interpreting article 16, the Committee ‘affirm the equality of human rights for men and women in the family’⁹⁷ and considered that ‘the minimum age for marriage should be 18 years for both men and women’.⁹⁸ In the Committee’s views, ‘early marriage restricts a woman’s economic autonomy and limits the development of their skills and independence

⁹² Communication no.8/2005

⁹³ General Recommendation no.24 paragraph 1

⁹⁴ General Recommendation no.19 paragraphs 19 and 20

⁹⁵ General Recommendation no.24

⁹⁶ Communication no.4/2004

⁹⁷ General recommendation no.21 paragraph 1

⁹⁸ General Recommendation no.21 Paragraph 36

and; reduces access to employment thereby detrimentally affecting their families and communities'.⁹⁹ In relation to article 16 (1) (h), the Committee held that:

Any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship or on the death of a relative is discriminatory and will have a serious impact on a woman's ability to divorce her husband, support herself or family and live an independent life.¹⁰⁰

Article 16 (1) (g) guarantees to each partner in a marriage, the right to choose a profession or employment and, the right to choose his or her name but; when 'by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied this right and that a woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being'.¹⁰¹ In the communication of Groupe D'interet Pour le Matronyme vs. France, two French nationals claim to be victims of a violation by France of article 16, paragraph 1 (g) of CEDAW alleging that, the right to choose a family name and to transmit the family name to children was violated by the state party. The Committee declared the communication inadmissible for non-exhaustion of local remedies.¹⁰²

3.3 Regional Instruments

The Charter of the Organisation of African Unity (1963) in its preamble states that it is 'conscious of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples'.¹⁰³ Also the Constitutive Act of the African Union (2001) of which; the three selected African states are parties¹⁰⁴ states amongst its objectives, the 'promotion and protection of human and peoples' rights',¹⁰⁵ and 'the promotion of gender equality'.¹⁰⁶ The African Charter on Human and Peoples' Rights (1981) ratified by Nigeria, Rwanda and Egypt¹⁰⁷ in its preamble, expressly provides that states undertake 'the elimination of all forms of discrimination, particularly those based on sex'.¹⁰⁸ Furthermore, the Charter also enshrines in article 2, the principle of non-discrimination on the grounds of sex while; article 13 guarantees the right of every citizen to

⁹⁹ General Recommendation no.21 Paragraph 37

¹⁰⁰ Paragraph 28

¹⁰¹ Paragraphs 17 and 18

¹⁰² Communication no. 12/2007

¹⁰³ Paragraph 2

¹⁰⁴ Egypt in 05/07/2001, Nigeria on 29/03/2001 and Rwanda on 16/04/2001

¹⁰⁵ Article 3 paragraph h

¹⁰⁶ Article 4, Paragraph L

¹⁰⁷ Egypt on 20/03/1984, Nigeria on 22/06/1983 and Rwanda on 15/07/1983

¹⁰⁸ Paragraph 8

freely participate in the government of his country. However, in Egypt, women are still underrepresented in politics and in public positions.¹⁰⁹ In interpreting article 13, the African Commission on Human and Peoples' Rights in the communication of Purohit and Moore vs. the Gambia held that; the right to participate in government 'extended to every citizen and its denial can only be justified by reason of legal incapacity or that the individual is not a citizen of a particular state but that, mental incapacity does not necessary mean legal incapacity'.¹¹⁰ Also, in the communication of Legal Resources Foundation vs. Zambia, the Commission held that the Republic of Zambia is in violation of article 13; noting that the Charter makes it clear that citizens should have the right to participate in the government of their country directly or through freely chosen representatives.¹¹¹

Article 15 guarantees to everyone the right to work and; to receive equal pay for equal work. In the communication of Pagnouille (on behalf of Mazou) vs. Cameroon, the Commission held that, article 15 was violated because the government had prevented Mr. Mazou's right 'to work as a magistrate even though others who have been condemned under similar conditions have been reinstated'.¹¹² Also, article 16 guarantees to everyone, the right to enjoy the best attainable state of physical and mental health. In interpreting article 16, the African Commission held in the communication of Social and Economic Rights Action Center and the Center for Economic and Social Rights vs. Nigeria that, 'governments are to desist from directly threatening the health of their citizens though their actions'.¹¹³ The African Commission on Human and People's Rights held in Purohit and another vs. the Gambia that, 'the enjoyment of the human right to health is vital to all aspects of a person's life and well being and that; it is crucial to the realisation of all the other fundamental human rights and freedoms'.¹¹⁴ Also, in the communication of Inter-African Union for Human Rights vs. Zaire, the Commission held that the failure of the government to provide basic services necessary for a minimum standard of health such as safe drinking water and electricity and; the shortage of medicine constitutes a violation of article 16.¹¹⁵ In the Nigeria's periodic report to the African Commission, women reportedly suffered high maternal mortality rate estimated at 800 per 100,000 live births.¹¹⁶

¹⁰⁹ Periodic report (7th & 8th) of Egypt presented to the African commission on human and peoples' rights for the period 2001 to 2004

¹¹⁰ Communication 241/2001

¹¹¹ Communication 211/98

¹¹² Communication 39/90

¹¹³ Communication 155/96

¹¹⁴ Communication 241/2001

¹¹⁵ Communication 100/93

¹¹⁶ Nigeria's 3rd periodic country report: 2005-2008 on the implementation of the African charter on human and peoples' rights in Nigeria

Furthermore, article 17 guarantees the right to education. In Rwanda, gender equity is still very low and most schools still lack basic infrastructure.¹¹⁷ In interpreting article 17, the Commission held that the ‘closures of Universities and secondary schools’ as described in the communication of the Inter-African Union for Human Rights vs. Zaire constitute a violation of article 17 of the African Charter.¹¹⁸ Article 18 guarantees the protection of family while; article 18(3) provides that all states parties must, ‘eliminate every form of discrimination against women and must ensure the protection of the rights of women as stipulated in international declarations and Conventions’.¹¹⁹ In interpreting article 18, the African Commission on Human and Peoples’ Rights held in *Modise vs. Botswana* that, the deportation of the complainant deprived the complainant of his family which is in violation of the complainant’s right to family life enshrined under article 18 (1) of the African Charter.¹²⁰

Likewise, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003) of which Nigeria and Rwanda are parties to the Protocol and; Egypt is however not yet a party to the Protocol¹²¹ begins with concerns in its preamble that ‘despite the ratification of the African Charter on Human and Peoples’ Rights and other international human rights instruments, women in Africa still continue to be victims of discrimination and harmful practices’.¹²² Article 1 (f) defines discrimination against women as:

Any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.

States parties guarantees in article 2 to ‘combat all forms of discrimination against women through appropriate legislative, institutional and other measures’. Also, states parties guarantees the elimination of harmful practices through legislative and other measures such as public awareness creation and, support to victims; the elimination of discrimination in education and training.¹²³ Article 14 guarantees to women, the right to health including sexual and reproductive health while; article 12 acknowledges the right to equal opportunity and access to education for all. Furthermore, article 9 guarantees the right to participation in the political and decision-making process of a country. Article 13 guarantees to women equal opportunities in work and career advancement while; articles 6 and 7, guarantees equal

¹¹⁷ The 9th and 10th periodic report of the republic of Rwanda under the African charter on human and peoples’ rights (2005-2009)

¹¹⁸ Communication 100/93

¹¹⁹ Article 18 paragraph 3

¹²⁰ Communication 97/93

¹²¹ Egypt is not a party to the Protocol while Nigeria ratified it on 16/12/2004 and Rwanda on 25/06/2004

¹²² Paragraph 12

¹²³ Article 12

enjoyment of rights in marriage, separation, and in divorce. Furthermore, the African Charter on the Rights and Welfare of a Child (1990) ratified by Nigeria, Rwanda and Egypt¹²⁴ recognises the principle of non-discrimination generally and in the equality of rights between men and women in the upkeep of the child.¹²⁵

3.4 Conclusion

Discrimination against women is like a stigma that has refused to leave; with women subjected to oppressive actions by the family, community and the state. There exist instruments that protect women against discrimination. At the international sphere, the UN Charter (1945) promotes the equality of men and women without discrimination with article 1 (3) of the Charter promoting 'respect for human rights and for fundamental freedoms for all without distinction as to sex'. The International Covenant on Economic Social and Cultural Rights (1966) guarantees to men and women on the basis of equality, all rights in the Covenant without discrimination with article 7 recognising the right to work for all without discrimination, article 10 provides for equality in marriage, article 12 states that everyone has the right to the best attainable state of mental and physical health and; article 13 provides that everyone has equal right to access education. The International Covenant on Civil and Political Rights (1966) recognises in article 3, the equal rights of men and women to the enjoyment of all rights in the Covenant. Article 23 guarantees the equality of men and women in marriage and family life while; article 25 provides for equality in access to the political and public life of a nation without discrimination. The Convention on the Political Rights of Women (1952) guarantees to women on equal basis with men the right to have access to political office.

Likewise, the Equal Remuneration Convention (1951) guarantees to all workers without discrimination, equal remuneration for men and women workers for work of equal value. Also, the Convention concerning Discrimination in respect of Employment and Occupation (1958) provides for equality of opportunity and treatment in employment and occupation. The Convention on the Rights of the Child (1989) recognises equality in parental care and responsibility, the Convention against Discrimination in Education (1960) provides for equality in access to education and; the Convention on the Nationality of Married Women (1958) guarantees to married women, the right to retain their nationalities in marriage and at its dissolution. The Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages (1962) guarantees to men and women on the basis of equality, the right to freely enter into marriage and prohibits early marriages. The Convention on the Elimination of all forms of Discrimination against Women (1979) provides in article 7 for the elimination of discrimination against women in the political and public life of a country, article 10 deal with equality between men and women in access to education and; article 11 guarantees the elimination of discrimination against women in employment. Article 12

¹²⁴ Egypt on 09/05/2001, Nigeria on 23/07/2001 and Rwanda on 11/05/2001

¹²⁵ Article 3, 18, 21(1) (b), 26(3) and 27

guarantees the right of women to health care services including reproductive health. And article 16 provides for equality in marriage and family life.

At the regional level, the Charter of the Organisation of African Unity (1963) promotes equality between men and women. Also the Constitutive Act of the African Union (2000), in article 4(1) provides for gender equality. And the African Charter on Human and Peoples' Rights (1981) in article 13 guarantees the right of every citizen to freely participate in the government of his country. Article 15 guarantees the right to work; article 16 acknowledges the right to the best attainable state of health for all without discrimination and; article 17 deals with equality in access to education. Article 18 provides for the protection of the family and the elimination of discrimination against women. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) provides in articles 6 and 7, for equality between men and women in marriage, separation and divorce, article 9 provides for equal participation in the political and decision-making process of a country and; article 12 guarantees equality in education. Article 13 provides for the right to work while; article 14 guarantees the right to health care including reproductive health. The African Charter on the Rights and Welfare of a Child (1990) recognises the principle of non-discrimination and the equality of rights between men and women. Based on the analyses of the instruments protecting women from discrimination, it can be inferred that the instruments effectively protects women from discrimination in education, employment, health care, family and marital life and; in politics and public life and; that all that is required of states parties is the proper implementation of these instruments.

Chapter Four: Jurisprudence of the CEDAW Committee and the Human Rights Committee in relation to discrimination against women

4.1 Introduction

This chapter will examine the functions of the CEDAW Committee and the CEDAW Committee jurisprudence with cases of discrimination against women in family, employment, and succession, in the transfer of nationality, domestic violence, trafficking of women for prostitution and in health care service. Communications decided by the CEDAW Committee such as:

- ❖ Cristina Munos-Vargas vs. Spain,
- ❖ Salgado vs. United Kingdom,
- ❖ N.S.F vs. United Kingdom,
- ❖ A.T vs. Hungary,
- ❖ Nguyen vs. the Netherlands,
- ❖ A.S vs. Hungary,
- ❖ Kayhan vs. Turkey,
- ❖ B.J vs. Germany,
- ❖ Sahide Goekce vs. Austria,
- ❖ SOS Sexisme vs. France,
- ❖ Zhen Zhen Zheng vs. the Netherlands,
- ❖ Karen Tayag Vertido vs. the Philippines,
- ❖ Fatma Yildirim vs. Austria and
- ❖ Groupe D'interet Pour le Matronyme vs. France will all be examined.

Also, communications decided by the Human Rights Committee and its functions will be examined in relation to cases of inequality and discrimination against women such as:

- ❖ Shirin and others vs. Mauritius,
- ❖ Avenllanal vs. Peru,
- ❖ Sandra Lovelace vs. Canada,
- ❖ Broeks vs. the Netherlands and
- ❖ Zwaan de Vries vs. the Netherlands will all be analysed.

In examining the decided communications, references will be made to the general recommendations of CEDAW Committee and the general comments of the Human Rights Committee from time to time. There are presently no communications to the CEDAW Committee from African women yet due to the low level of awareness on the existence of the treaty body amongst African women and; lack of capacity building on how to use the Optional Protocol to CEDAW. Also, at the African Commission on Human and Peoples' Rights, none of the cases thus far involve African women, family and state because family issues are seen as private issues amongst African women and; most women will not approach the Commission to complaint about discrimination in the family for fear of rejection.

The Committee on the Elimination of Discrimination against Women established under CEDAW consists of twenty-three experts who are elected by states parties from among their nationals and; they serve in their personal capacity.¹²⁶ The experts are elected for a term of four years, but the terms of nine of the members expires after two years.¹²⁷ The Committee meets at the United Nations headquarters or any place as determined by the Committee, and they meet annually.¹²⁸ The Committee has the sole aim of ‘considering the progress made in the implementation of the Convention’ and the reports submitted by states parties are examined and comments are made in the form of concluding observations on states.¹²⁹ Below are the African states parties to CEDAW with their reservations.

AFRICAN STATES PARTIES TO CEDAW	SIGNATURE	ACCESSION	RESERVATIONS
ALGERIA		22 MAY 1996	The government of the Republic of Algeria agrees to apply the provisions of article 2 on condition that they do not conflict with the provisions of the Algerian family code and that the provisions of article 15 paragraph 4, article 16 should not be interpreted to contradict the provisions of the Algerian family code, also article 29 paragraph 1 of the convention.
ANGOLA		17 SEP 1986	
BENIN	11 NOV 1981	12 MAR 1992	
BOTSWANA		13 AUG 1996	
BURKINA FASO		14 OCT 1987	
BURUNDI	17 JUL 1980	8 JAN 1992	
CAMEROON	6 JUNE 1983	23 AUG 1994	
CAPE VERDE		5 DEC 1980	
CENTRAL AFRICAN REPUBLIC		21 JUNE 1991	
CHAD		9 JUNE 1995	
CONGO	29 JUL 1980	26 JUL 1982	
COTE D'IVOIRE	17 JUL 1980	18 DEC 1995	

¹²⁶ Article 17 of CEDAW

¹²⁷ Article 17 (5) of the Optional Protocol to CEDAW

¹²⁸ There is a proposed amendment to article 20 (1) where the amendment would read ‘the committee shall normally meet annually in order to consider the reports submitted in accordance with article 18 of the present convention. The duration of the meeting shall be determined by a meeting of the states parties to the present convention’. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/163/77/PDF/N95/6377.pdf?OpenElement>

¹²⁹ Article 17 (1) of CEDAW



DEMOCRATIC REPUBLIC OF CONGO	17 JUL 1980	17 OCT 1986	
DJIBOUTI		2 DEC 1998	
EGYPT	16 JUL 1980	18 SEP 1981	Egypt makes a reservation to article 16 and paragraph 1 of article 29 and a general reservation on article 2 provided that such compliance do not run counter to the Islamic Sharia.
EQUATORIAL GUINEA		23 OCT 1984	
ERITREA		5 SEP 1995	
ETHIOPIA	8 JUL 1980	10 SEP 1981	Ethiopia does not consider itself bound by Article 29 paragraph 1 of the convention.
GABON	17 JUL 1980	21 JAN 1983	
GAMBIA	29 JUL 1980	16 APR 1993	
GHANA	17 JUL 1980	2 JAN 1986	
GUINEA	17 JUL 1980	9 AUG 1982	
GUINEA-BISSAU	17 JUL 1980	23 AUG 1985	
KENYA		9 MAR 1984	
LESOTHO	17 JUL 1980	22 AUG 1995	Lesotho does not consider itself bound by Article 2 to the extent that it conflicts with Lesotho's constitutional stipulation in relation to succession to the throne.
LIBERIA		17 JUL 1984	
LIBYA		16 MAY 1989	Libya will implement Article 2 with due regards to Islamic Shariah relating to determination of inheritance and paragraphs 16(c) and (d) without prejudice to any of the rights guaranteed to women by the Islamic shariah.
MADAGASCAR	17 JUL 1980	17 MAR 1989	
MALAWI		12 MAR 1987	
MALI	5 FEB 1985	10 SEP 1985	
MAURITANIA		10 MAY 2001	Mauritania approve the convention as long as its not contrary to Islamic Sharia and are in accordance with the Constitution
MAURITIUS		9 JUL 1984	Mauritius does not consider itself bound by paragraph 1 of article 29 of the convention.
MOROCCO		21 JUNE 1993	Article 9 paragraph 2, Article 16, Article 29.



MOZAMBIQUE		21 APR 1997	
NAMIBIA		23 NOV 1992	
NIGER		8 OCT 1999	Niger expresses reservation with regards to Article 2 paragraph (d) and (f), Article 5 paragraph (a.) ,Article 15 paragraph 4 and Article 16 paragraph 1 (c),(e), and (g) concerning the same rights and responsibilities during marriage and cannot be applied immediately as they are contrary to existing customs and practises. The country also expresses reservations to Article 29.
NIGERIA	23 APR 1984	13 JUNE 1985	
RWANDA	1 MAY 1980	2 MAR 1981	
SAO TOME AND PRINCIPE	31 OCT 1995	3 JUNE 2003	
SENEGAL	29 JUL 1980	5 FEB 1985	
SEYCHELLES		5 MAY 1992	
SIERRA LEONE	21 SEP 1988	11 NOV 1988	
SOUTH AFRICA	29 JAN 1993	15 DEC 1995	
SWAZILAND		26 MAR 2004	
TOGO		26 SEP 1983	
TUNISIA	24 JUL 1980	20 SEP 1985	Tunisia expresses reservation concerning Article 9 paragraph 2 which must not conflict with the provisions of Tunisian nationality code, Article 16 paragraph (c), (d), (f), (g), and (h) must not conflict with provisions of personal status code concerning the granting of family names to children and the acquisition of property through inheritance and reservation concerning Article 29 paragraph 1
UGANDA	30 JUL 1980	22 JUL 1985	
TANZANIA	17 JUL 1980	20 AUG1985	
ZAMBIA	17 JUL 1980	21 JUNE 1985	
ZIMBABWE		13 MAY 1991	

Furthermore, in accordance with the Optional Protocol to CEDAW, the Committee has the competence to consider communications submitted by individuals or on behalf of individuals. African states parties to the Optional Protocol to CEDAW are:

AFRICAN STATES PARTIES TO THE OPTIONAL PROTOCOL TO CEDAW	SIGNATURE	ACCESSION	RESERVATIONS
ANGOLA		1 NOV 2007	

BOTSWANA		21 FEB 2007	
BURKINA FASO	16 NOV 2001	10 OCT 2005	
CAMEROON		7 JAN 2005	
EQUATORIAL- GABON		16 OCT 2009 5 NOV 2004	
GUINEA-BISSAU	12 SEP 2000	5 AUG 2009	
LESOTHO	6 SEP 2000	24 SEP 2004	
LIBYA		18 JUNE 2004	
MALI		5 DEC 2000	
MAURITIUS	11 NOV 2001	31 OCT 2008	
MOZAMBIQUE		5 NOV 2008	
NAMIBIA	19 MAY 2000	26 MAY 2000	
NIGER		30 SEP 2004	
NIGERIA	8 SEP 2000	22 NOV 2004	
RWANDA		15 DEC 2008	
SENEGAL	10 DEC 1999	26 MAY 2000	
SOUTH AFRICA		18 OCT 2005	
TUNISIA		23 SEP 2008	
UNITED REPUBLIC OF TANZANIA		12 JAN 2006	

Also, the Committee considers reports submitted by states parties on the legislative, administrative or other measures taken to implement the provisions of the Convention within one year of entry into force and thereafter every four years.¹³⁰ The Committee reports annually to the General Assembly of the United Nations through the Economic and Social Council on its activities.¹³¹ The Committee also has the function of inviting specialized agencies to submit reports in areas within their scope on the implementation of the Convention¹³² and formulates suggestions and general recommendations to states parties. However, the CEDAW Committee faces a lot of obstacles from issues of independence and expertise of treaty body members, to the quality of individual decisions, sufficient resources, overdue reports, and reservations to the Convention. There are states parties that have signed

¹³⁰ Article 18 (1) of CEDAW

¹³¹ Article 21 of CEDAW

¹³² Article 22 of CEDAW

but failed to ratify the Convention.¹³³ Also, the membership of the Committee remains regionally imbalanced.

On the other hand, the Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights consist of 18 members and; has the function of considering reports from state parties.¹³⁴ Sao Tome and Principe, China and Cuba have so far refused to ratify the Covenant. Below are the African states parties to the CCPR:

AFRICAN STATES PARTIES TO CCPR	SIGNATURE	ACCESSION RATIFICATION	RESERVATIONS
ALGERIA	10 DEC 1968	12 SEP 1989	
ANGOLA		10 JAN 1992	
BENIN		12 MAR 1992	
BOTSWANA	8 SEP 2000	8 SEP 2000	THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA CONSIDERS RESERVATION TO ARTICLE 7 OF THE COVENANT AND ARTICLE 12(3) TO THE EXTENT TO SECTION 14 OF THE CONSTITUTION
BURKINA FASO		4 JAN 1999	
BURUNDI		9 MAY 1990	
CAMEROON		27 JUNE 1984	
CAPE VERDE		6 AUG 1993	
CENTRAL AFRICAN REPUBLIC		8 MAY 1981	
CHAD		9 JUNE 1995	
CONGO		5 OCT 1983	THE GOVERNMENT OF THE REPUBLIC OF CONGO DOES NOT CONSIDER ITSELF BOUND BY THE PROVISIONS OF ARTICLE 11 OF THE COVENANT.
COTE D'IVOIRE		26 MAR 1992	
DEMOCRATIC REPUBLIC OF THE CONGO		1 NOV 1976	
DJIBOUTI		5 NOV 2002	
EGYPT	4 AUG 1967	14 JAN 1983	
EQUATORIAL GUINEA		25 SEP 1987	
ERITREA		22 JAN 2002	

¹³³ Article 21 of CEDAW

¹³⁴ Article 40 of CCPR



ETHIOPIA		11 JUNE 1993	
GABON		21 JAN 1983	
GAMBIA		22 MAR 1979	THE GOVERNMENT OF THE GAMBIA ENTERED A RESERVATION IN RESPECT OF ARTICLE 14 PARAGRAPH 3(d) OF THE COVENANT FOR FINANCIAL REASONS AND THUS FREE LEGAL ASSISTANCE IS LIMITED TO PERSONS CHARGED WITH CAPITAL OFFENCES ONLY.
GHANA	7 SEP 2000	7 SEP 2000	
GUINEA	28 FEB 1967	27 JAN 1978	GUINEA ENTERED RESERVATIONS TO THE PROVISIONS OF ARTICLE 48(1) OF THE COVENANT THAT ITS CONTRARY TO THE PRINCIPLE OF THE UNIVERSALITY OF INTERNATIONAL TREATIES AND THE DEMOCRATIZATION OF INTERNATIONAL RELATIONS.
GUINEA-BISSAU	12 SEP 2000	1 NOV 2010	
KENYA		1 MAY 1972	
LESOTHO		9 SEP 1992	
LIBERIA	18 APR 1967	22 SEP 2004	
LIBYA		15 MAY 1970	
MADAGASCAR	17 SEP 1969	21 JUNE 1971	
MALAWI		22 DEC 1993	
MALI		16 JUL 1974	
MAURITANIA		17 NOV 2004	THE MAURITANIAN GOVERNMENT WHILE ACCEPTING ARTICLE 18 DECLARES THAT THEIR APPLICATION SHALL BE WITHOUT PREJUDICE TO THE ISLAMIC SHARIAH AND THAT THE PROVISIONS OF ARTICLE 23(4) OF THE RIGHTS AND RESPONSIBILITIES IN MARRIAGE AS NOT AFFECTING ANY WAY THE PRESCRIPTION OF THE ISLAMIC SHARIAH.
MAURITIUS		12 DEC 1973	
MOROCCO	19 JAN 1977	3 MAY 1979	



MOZAMBIQUE		21 JUL 1993	
NAMIBIA		28 NOV 1994	
NIGER		7 MAR 1986	
NIGERIA		29 JUL 1993	
RWANDA		16APR1975	
SENEGAL	6JUL1970	13FEB1978	
SEYCHELLES		5MAY1992	
SIERRA LEONE		24AUG1996	
SOMALIA		24JAN1990	
SOUTH AFRICA	3OCT1994	10DEC1998	
SUDAN		18MAR1986	
SWAZILAND		26MAR2004	
TANZANIA		11 JUNE 1976	
TOGO		24 MAY 1984	
TUNISIA	30APR1968	18 MAR 1969	
UGANDA		21 JUNE 1995	
ZAMBIA		10 APR 1984	
ZIMBABWE		13 MAY 1991	

The Human Rights Committee receives and, considers communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant under article 2 of the Optional Protocol to the Covenant.¹³⁵ The African states parties to the Optional Protocol to CCPR are:

AFRICAN STATES PARTIES TO THE OPTIONAL PROTOCOL TO CCPR	SIGNATURE	ACCESSION RATIFICATION	RESERVATIONS
ALGERIA		12 SEP 1989	
ANGOLA		10 JAN 1992	

¹³⁵ Adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976.



BENIN		12 MAR 1992	
BURKINA FASO		4 JAN 1999	
CAMEROON		27 JUNE 1984	
CAPE VERDE		19 MAY 2000	
CENTRAL AFRICAN REPUBLIC		8 MAY 1981	
CHAD		9 JUNE 1995	
CONGO		5 OCT 1983	
COTE D'IVOIRE		5 MAR 1997	
DEMOCRATIC REPUBLIC OF THE CONGO		1 NOV 1976	
EQUATORIAL GUINEA		25 SEP 1987	
GAMBIA		9 JUNE 1988	
GHANA	7 SEP 2000	7 SEP 2000	
GUINEA	19 MAR 1975	17 JUNE 1993	
LESOTHO		6 SEP 2000	
LIBYA		16 MAY 1989	
MADAGASCAR	17 SEP 1969	21 JUNE 1971	
MALAWI		11 JUNE 1996	
MALI		24 OCT 2001	
MAURITIUS		12 DEC 1973	
NAMIBIA		28 NOV 1994	
NIGER		7 MAR 1986	
SENEGAL	6 JUL 1970	13 FEB 1978	
SEYCHELLES		5 MAY 1992	
SIERRA LEONE		23 AUG 1996	
SOMALIA		24 JAN 1990	
SOUTH AFRICA		28 AUG 2002	
TOGO		30 MAR 1988	
UGANDA		14 NOV 1995	The Republic of Uganda does not accept the competence of the Human Rights Committee to consider a communication under article 5 of the Optional Protocol to CCPR.



ZAMBIA		10 APR 1984	
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However, the following African states parties are not yet parties to the Optional Protocol to the International Covenant on Civil and Political Rights and; women from these states cannot bring complaints of discrimination. States such as Zimbabwe, Tanzania, Tunisia, Swaziland, Sudan, Sao Tome and Principe, Rwanda, Nigeria, Mozambique, Morocco, Mauritania, Liberia, Kenya, Guinea-Bissau, Gabon, Botswana, Burundi, Egypt, Eritrea and Ethiopia.

4.2 CEDAW Committee jurisprudence.

4.2.1 Discrimination against women in access to succession

4.2.1.1 Cristina Munos-Vargas vs. Spain: The author of the communication is Cristina Munoz- Vargas, a Spanish national who claims to be a victim of a violation by Spain of article 2 paragraphs (c) and (f) of CEDAW.¹³⁶ The author claims that the state party discriminated against her on the basis of sex by denying her right, as the first-born child, to succeed her late father to the title of Count of Bulnes. The Committee declared the communication inadmissible noting that, the facts that are subject of the communication occurred prior to the entry into force of the Optional Protocol for the state party and; were not of a continuous nature in accordance with article 4 paragraph 2(e) of the Optional Protocol to CEDAW. Some Committee members concurring the majority decision of the Committee declared the communication inadmissible under article 4, paragraph 2 (b) of the Optional Protocol. In a dissenting opinion by Committee member Mary Shanthi Dairia, argues that, the communication is admissible under article 5 (a) of the Convention and that; the violation is of a continuing nature. I totally agree with the dissenting view in that, the aim of the Convention is to eliminate all forms of discrimination against women and; that states parties according to the Committee are suppose to ensure that women are protected against ‘direct or indirect discrimination committed by public authorities, the judiciary, organisation, enterprises or private individuals’, and ‘address the persistence of gender-based stereotypes that affects women by law, legal and societal structures and, institutions’.¹³⁷ States parties are under an obligation to ensure that men and women are entitled to ‘equal rank in the order of succession’ in terms of inheritance.¹³⁸

4.2.2 Discrimination against women in terms of transfer of nationality

4.2.2.1 Salgado vs. United Kingdom: This is the communication of a British national married to a Colombian citizen who has not been able to pass her British nationality onto her son, who was born in Colombia, because the nationality laws at the time stated that

¹³⁶Communication no.7/2005

¹³⁷ General Recommendation No.25, paragraph 7

¹³⁸ General recommendation No.21 Paragraph 34

nationality only passed from the father, not the mother.¹³⁹ The author claims to have been a victim of violations by the state party of articles 1, 2(f) and 9, paragraph 2 of CEDAW. On exhaustion of domestic remedies, the state party alleged that the author did not make an application for registration of her eldest son as a British citizen and that; the author never challenged in the high court, the continuing refusal of the British authorities to grant her eldest son, British nationality. The communication was not admitted by the Committee under article 4, Paragraph 2 (e) of the Optional Protocol because the original discrimination against Ms Salgado occurred when she first tried to get her son, British citizenship and that; ceased to exist the day her son turned age of majority. And that it occurred prior to the entry into force of the Optional Protocol and; she failed to exhaust all domestic remedies. The transfer of nationality from women to their children is an area where women continue to be discriminated against. Women should be able to, on equal term with men have the right to acquire, change or retain their nationality and also, grant their nationality to their children.

4.2.3 Discrimination against women in terms of domestic violence

4.2.3.1 N.S.F vs. United Kingdom: This is the case of a Pakistani asylum seeker currently living in the United Kingdom with her two children and she is fighting her deportation from the United Kingdom back to Pakistan, where she claims to fear for her life at the hands of her former husband and; for her two sons' future and education. She claims that the state party violated articles 2 and 3 of the CEDAW.¹⁴⁰ The state party challenged the admissibility of the author's claim, stating that she did not avail herself of the possibility of seeking permission to apply for a judicial review by the high court of, the refusal to grant her discretionary leave to remain in the country and; that no allegation of sex discrimination was formulated by the author at any court. The Committee considered the communication inadmissible because domestic remedy was not exhausted.

4.2.3.2 A.T vs. Hungary: The author, a Hungarian national claims to be a victim of domestic violence and alleges that the state failed in its obligation to protect her from her former husband and; thus violated articles 2 (a), (b), (e), 5 (a) and 16 of the CEDAW.¹⁴¹ On the issue of exhaustion of domestic remedies, the state party did not raise any preliminary objections as to the admissibility of the communication and stated that; the existing remedies in Hungary is not capable of providing immediate protection to the author. The unreasonably prolonged periods of proceedings were in issue and the Committee held that a delay of over three years from the date of the incident amounted to an unreasonably prolonged delay. The Committee held the communication admissible because the abuse continued well after the Optional Protocol came into force and the state party failed to fulfil its obligation. It is a very good decision in that; states are under an obligation to protect women within their territories from domestic violence.

¹³⁹ Communication no.11/2006

¹⁴⁰ Communication no.10/2005

¹⁴¹ Communication no.2/2003

4.2.3.3 Fatma Yildirim vs. Austria: The alleged victim Fatma Yildirim (deceased) was represented by the Vienna Intervention Centre against Domestic Violence and the Association for Women’s Access to Justice.¹⁴² They claim that Yildirim, an Austrian national of Turkish origin and former client of the centre was a victim of a violation by the state party of articles 1, 2, 3 and 5 of CEDAW because of the failure of the state to take all appropriate positive measures to protect her right to life and personal security. The Committee submitted that the state party violated its obligations under article 2 (a) and (c) through (f) and article 3 of the Convention read in conjunction with article 1 of the Convention and; general recommendation 19. The Committee held the communication admissible.

4.2.3.4 Sahide Goekce vs. Austria: The communication was submitted by the Vienna Intervention Centre against Domestic Violence and the Association for Women’s Access to Justice on behalf of Sahide Goekce (deceased) who was the alleged victim against the state party Austria.¹⁴³ They claimed that Sahide Goetce an Austrian national of Turkish origin was a victim of a violation by the state of articles 1, 2, 3 and 5 of the Convention because the state party did not actively take all appropriate measures to protect Sahide Goetce’s right to personal security and life. On exhaustion of domestic remedies, the Committee held that in terms of domestic remedies, the remedies related to the obligation of a state party concerned to exercise due diligence to protect; investigate the crime, punish the perpetrator and provide compensation as set out in general recommendation no. 19. The Committee held that the state party violated its obligation under article 2(a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and, general recommendation 19. The communication was held admissible by the Committee.

4.2.4 Discrimination against women in employment

4.2.4.1 Nguyen vs. the Netherlands: The author, a resident of the Netherlands claims to be a victim of discriminatory maternity benefits which gave her less than full compensation for loss of income during her pregnancy and; that the state violated article 11 (2) (b) of CEDAW.¹⁴⁴ The author, a salaried part-time and self –employed worker claims that a provision of legislation constituted a violation of her rights under the Convention because it resulted in her receiving less benefits. On exhaustion of local remedies, the Committee held that the proceedings were unlikely to bring relief after her first attempt was dismissed. The Committee stated however, that the author failed to show that the application of the provision of the legislation was discriminatory towards her as a woman; the communication was held inadmissible.

¹⁴² Communication no. 6/2005

¹⁴³ Communication no. 5/2005

¹⁴⁴ Communication no.3/2004

4.2.4.2 Karen Tayag Vertido vs. the Philippines: Karen Tayag Vertido, the author of the communication¹⁴⁵ and a Filipino national claims to be a victim of discrimination within the meaning of article 1 of the Convention in relation to general recommendation No.19 of the Committee. She claims that her rights under articles 2 (c), (d), (f) and 5 (a) of CEDAW were violated by the state party. The author argues that she suffered revictimization by the state after she was sexually harassed at work and claims that by acquitting the perpetrator, the state party violated her right to non-discrimination and; failed in its legal obligation to respect, protect, promote and fulfil that right. On exhaustion of local remedies, the state party argues that the author failed to avail herself of the special remedy of certiorari provided under the rules of court while, the author claims that the remedy was not avail to victims and; that the remedy was used to correct errors in jurisdiction and not errors in judgement. Also, that the remedy was a civil remedy. The Committee held the communication admissible and stated that, the remedy of certiorari was not available to the author. Women continue to suffer sexual harassment in the workplace which violates their right to work. According to the Committee, 'equality in employment can be seriously impaired when women are subject to gender-specific violence such as sexual harassment in the workplace'.¹⁴⁶

4.2.4.3 Rahime Kayhan vs. Turkey: The author, a school teacher and a national of Turkey, claims to have been discriminated against when she was dismissed from her employment at a state school, for refusing to take off her headscarf while at work and that; the state party allegedly violated her right to work, right to the same employment opportunities as others, as well as her right to promotion, job security, pension rights and equal treatment.¹⁴⁷ The author claims that the state violated article 11 of the Convention on the Elimination of all forms of Discrimination against Woman. On the issue of exhaustion of local remedies, the state party alleged that the same issue of discrimination based on sex was not brought before the administrative bodies in the state to enable the state party remedy the situation and; that the procedure of the administrative bodies was not followed by the author. The communication was held inadmissible by the Committee under article 4, paragraph 1 of the Optional Protocol to the Convention because the author failed to exhaust domestic remedies.

4.2.5 Discrimination against women in marriage and family

4.2.5.1 B.J vs. Germany: The communication was submitted by the author, a German citizen who claims to be a victim of discriminatory laws regulating divorce which did not sufficiently compensate her.¹⁴⁸ The author claims that she was subjected to gender-based discrimination under the statutory regulations regarding the law on the legal consequences of divorces in terms of equalization of accrued gains, pensions and maintenance after the

¹⁴⁵ Communication no.18/2008

¹⁴⁶ General Recommendation no.19 paragraph 17

¹⁴⁷ Communication no.8/2005

¹⁴⁸ Communication no.1/2003

termination of marriage. The equalization of pension was an issue on exhaustion of local remedies where the state party argued that the author restricted her appeal against the divorce decree solely to the pronouncement of the divorce itself and; did not make the equalization of pensions, the subject of a review by an appellate court. The Committee declared the communication inadmissible under article 4, paragraph 1 of the Optional Protocol to CEDAW for non-exhaustion of domestic remedies and; that the issue occurred prior to the entry into force of the Optional Protocol. However, some Committee members in their dissenting views held that, the application of domestic remedies is unreasonably prolonged. The above view is questionable in that women in divorce proceedings are not sufficiently compensated because the non-financial contributions of a woman during marriage are not taken into account and; they continue to suffer sex-based discrimination in marriage.

4.2.5.2 SOS Sexisme vs. France: The authors of the communication are French nationals represented by an organisation who claims that a legislation in France on family names is discriminatory towards married women because it gives fathers the right to veto the transmission of the family name of their wives to their children and; that it violates equality between men and woman under CEDAW.¹⁴⁹ The state party claims that some of the authors are not victims under article 2 of the Optional Protocol to CEDAW and; that the communication be declared inadmissible because they had not exhausted local remedies and that the matter was being examined by a court under article 4. The Committee found two of the author's communication inadmissible because they are not victims within the meaning of article 2 of the Optional Protocol because they are not married women, women living in de facto union and mothers and; that the communication of 3 other authors who also wished to take their mothers names, have not attempted to exhausted domestic remedies. And have not shown that they suffer any sex-based discrimination and; that the 5 authors whom are married and have children who bear their fathers family name might consider themselves victims of discrimination because they were unable to transmit their family names to their children. However, the discrimination against them ended when their children reached the age of majority and, that is up to the children and not their mothers in deciding whether or not to change their family names. The communication was declared inadmissible under article 4 of the Optional Protocol to CEDAW.

4.2.5.3 Groupe D'interet Pour le Matronyme vs. France: This communication was submitted by Groupe D'interet Pour le Matronyme on behalf of G.D and S.F against France.¹⁵⁰ The authors of the communication are two French nationals who claim to be victims of a violation by France of article 16, paragraph 1 (g) of CEDAW in view of the fact that the state party did not take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and; to ensure on the basis of equality of men and women, the same personal rights as husband and wife including the right to choose a family name and to transmit the family name to children. The state party claim

¹⁴⁹ Communication no.13/2007

¹⁵⁰ Communication no.12/2007

that appeals were pending before courts and that they had not claimed violation of the articles to the Convention at the national level. On exhaustion of domestic remedies, the Committee held that although domestic remedies have not been exhausted with the appeals pending, the application of the remedy provided by article 61-1 of the Civil Code is both unreasonably prolonged and unlikely to bring effective relief. The Committee declared the communication inadmissible under article 2 of the Optional Protocol because the authors lacked the quality of victims. In a dissenting decision, some members of the Committee declared the communication admissible and stated that; the authors are victims of discrimination by the state party under articles 2, 5 and 16 (10) of the Convention, claiming that the authors were indirect victims of discriminatory legislation based on the patriarchal view of fathers as heads of family imposed by the state party during their childhood by prohibiting the transmission of or change of family name to the mother's family name only. I totally agree with the dissenting decision in that women continue to be victims of discrimination in the transfer of family names to their children.

4.2.6 Trafficking and exploitation of women

4.2.6.1 Zhen Zhen Zheng vs. the Netherlands: The author of the communication, a Chinese asylum seeker who claims to be a victim of a violation by the Netherlands of article 6 of the Convention on the Elimination of all forms of Discrimination against Women.¹⁵¹ The author claims that the state party acted in a manner that breaches article 6 of the Convention by its careless treatment of her application for asylum when she was still a minor and; its failure to provide her with specialized legal aid, adequate protection and support. The issue of decisions still pending in courts and that, the same issues before the Committee were not brought before courts in the state party were in issue. The Committee on the Elimination of Discrimination against Women found the communication inadmissible under article 4, paragraph 1 of the Optional Protocol for non-exhaustion of domestic remedies. However, dissenting opinions were expressed by Committee members Mary Shanthi Dairiam, Violeta Neubauer and Silvia Pimentel stating that the communication is admissible under article 7 paragraphs 3 of the Optional Protocol to the CEDAW as it reveals a violation of article 6 of the Convention. States parties are under an obligation to protect women against sexual exploitation and trafficking for prostitution.

4.2.7 Discrimination against women in access to health care services including reproductive care

4.2.7.1 A.S vs. Hungary: The author, a Roma woman represented by the European Roma Rights Centre and the Legal Defence Bureau for National and Ethnic Minorities brought a case against Hungary claiming that the author had undergone forced sterilisation when she came into a state hospital for an emergency caesarean section to remove her dead foetus and alleged that the state violated articles 10 (h), 12, and 16 (1) (e) of CEDAW.¹⁵² On exhaustion

¹⁵¹ Communication no.15/2007

¹⁵² Communication 4/2004

of local remedies, the state party argued that the author failed to take advantage of the extraordinary remedy of judicial review even though it acknowledged the nature of the judicial review as not been effective while; the author claims that her case did not fulfil the criteria for this remedy and, that no appeal was allowed. The Committee found the communication admissible under article 7, paragraph 3 of the Optional Protocol to the Convention and; held that it cannot be expected that the author availed herself of the remedy. Under general recommendation no.19, 'compulsory sterilization adversely affects women's physical and mental health and; infringes the right of women to decide on the number and spacing of their children'.¹⁵³ Women should as of right be able to decide on the number of children they want.

There are however, some striking features in the CEDAW Committee jurisprudence in that: (1) there are no complaints against China, US or India because the three states have not ratified the Optional Protocol to CEDAW, (2) that, most women that have complained against European states parties are originally immigrants; in the communication of *Sahide Goekce vs. Austria*, the author was a Dutch national of Turkish origin. Also, in the communication of *Zhen Zhen Zheng vs. the Netherlands*, the author is a Chinese asylum seeker. Furthermore, in the communication of *N.S.F vs. United Kingdom*, the author is a Pakistani asylum seeker while; in the communication of *Fatma Yildirim vs. Austria*, the author was an Austrian national of Turkish origin, (3) that there is no complaint of discrimination by an African woman against an African state party to the CEDAW Committee yet, (4) that issues so far before the CEDAW Committee are restricted to domestic violence in the family, discrimination against women in employment, succession, health care services, family and marital life, exploitation and trafficking for prostitution and in the transfer of nationality and; that there are no communications yet, on discrimination in education, politics, land and others, (5) that most communications submitted to the CEDAW Committee have been declared inadmissible for reasons ranging from non-exhaustion of local remedies, to the facts of the communication occurred prior to the entering into force of the Optional Protocol in the state party and; procedural errors as in the communication of *B.J vs. Germany*, (6) that the Committee will allow the state party discretion to implement CEDAW obligations as in *Nguyen vs. the Netherlands*, (7) that most communications are submitted personally by authors but others on behalf of victims, which they must have connection with as in the cases of *Sahide vs. Austria* and; *Goekce vs. Austria*, (8) that the Committee is strong in cases of domestic violence especially rape cases and, (9) that the Committee can still question states parties on articles to which they have made reservations.

Furthermore, on the issue of exhaustion of local remedies which is a general principle of international law and an element of international human rights mechanism, gives the state party concerned an opportunity to remedy human rights violations first at the domestic level unless the proceedings would be unreasonably prolonged or no effective relief could be expected. However, the CEDAW Committee has established the following principles which

¹⁵³ Paragraph 22

can be used in the future on local remedies: (1) that in communications denouncing domestic violence, the remedies for purpose of admissibility relates to the obligation of a state party concerned to exercise due diligence to protect, investigate the crime, punish the perpetrator and provide compensation, (2) that where the domestic remedy is of an extra ordinary nature, the complainant is not expected to exhaust the remedy, (3).that the authors of communications are required to raise in substance the same issues at the domestic courts as well as before the Committee, (4) that on trafficking of women for prostitution, the Committee held in *Zhen Zhen Zheng vs. the Netherlands* that, neither the asylum procedure or the resident permit procedure both initiated by the author on other grounds than trafficking are relevant. State party should protect victims of trafficking and that the victims must be informed of the avenues under which they can seek protection, (5) that for a remedy to be effective, cases involving rape and sexual offences claim should be dealt with in a fair, impartial, timely and expeditious manner and, (6) that if state party does not refute the author's claim on exhaustion of local remedies, the Committee may accept such, as in the communication of *A.S vs. Hungary*.

Also, the submissions by parties and states as respondents have enriched the objective for human rights jurisprudence in that: (1) it exposes the various forms of discrimination in states, (2) that it shows the prevailing lack of seriousness with which violence against women is viewed by the public and the criminal justice system, (3) that state party are made to realise that, the system of remedies in their legislation are ineffective, (4) that submissions by parties have greatly improve the interpretations of the Convention as in article 11 paragraph 2 (b), where it was interpreted as 'not meaning full pay or full compensation for loss of income resulting from pregnancy and childbirth' and; that a certain margin of discretion is left to states parties to devise a system of maternity leave benefits which fulfils the requirement of the Convention as held in the communication of *Nguyen vs. the Netherlands*. Also in the communication of *Vertido vs. the Philippines* where 'gender- based myths and misconceptions about rape and rape victims' was held as a violation of article 5 paragraph (a) of the Convention.

Likewise, CEDAW Committee jurisprudence is relevant to African women in the following ways: (1) in that women in Africa can successfully challenge issues of discrimination in all spheres of life, (2) that it's a tool for the protection and promotion of women's rights in Africa, (3) that it is a mechanism for holding the states accountable to its obligations under CEDAW, (4) that it improves awareness on women's rights in Africa, (5) that it offers an opportunity to reduce the problem of discrimination in Africa through an alternative means, (6) that cases of domestic violence can be used as jurisprudence in Africa, (7) that women can bring issues of violations of rights not specifically provided for in the Convention under article 1 of the Convention which provides for discrimination in general, (8) that it gives women an idea of what constitutes violation of a particular right, (9) that remedies provided by the Committee will benefit other women and; (10) that the Committee jurisprudence creates advancement in women's rights.

4.3 The Human Rights Committee jurisprudence in relation to discrimination against women

4.3.1 Discrimination against women in family and marriage

4.3.1.1 Shirin and others vs. Mauritius: This is a case of 19 Mauritian women claiming that the enactment of two Acts by Mauritius constituted discrimination based on sex against Mauritius women, because it violated their rights to found a family and home and; that the state party is in breach of articles 2, 3, 4, 17, 23, 25 and 26 of the International Covenant on Civil and Political Rights.¹⁵⁴ The Human Rights Committee in its decision states that the law adversely distinguished on the grounds of sex, on the right to be free from arbitrary and unlawful interference with family and was in breach of the International Covenant on Civil and Political Rights. The communication was decided by the Human Rights Committee under article 5, paragraph 4 of the Optional Protocol to ICCPR. The Covenant guarantees that ‘the family is entitled to protection by the state’.¹⁵⁵

4.3.2 Discrimination against women in terms of equality before the courts

4.3.2.1 Avenllanal vs. Peru: Article 168 of the Peruvian Civil Code provided that only men were allowed to represent matrimonial property by the courts.¹⁵⁶ The author complained to the Human Rights Committee claiming that the provision violated her rights to equality. The Committee held that the application of article 168 of the Civil Code resulted in the author being denied equality before the courts and constituted discrimination on the ground of sex. States parties must ensure the equal enjoyment of rights by men and women and, that ‘the rights of women to own property should not be restricted on the basis of marital status or any other discriminatory ground’.¹⁵⁷

4.3.3 Discrimination against women in employment

4.3.3.1 Broeks vs. the Netherlands: The author claims that the Unemployment Benefits Acts in the state party violated her rights under article 26 of ICCPR especially her right to equality before the law and equal protection of the law.¹⁵⁸ The Human Rights Committee found that the law differentiated on the ground of sex, placing married women at a disadvantage as compared with married men.

4.3.3.2 Zwaan de Vries vs. the Netherlands: The author claims that a Dutch law stipulated that unemployment benefits could not be claimed by married women who were neither

¹⁵⁴ Communication no. 035/1978

¹⁵⁵ General comment no.19 paragraph 1

¹⁵⁶ Communication no.202/1986

¹⁵⁷ General Comment No.28 Paragraph 31

¹⁵⁸ Communication no.172/84

breadwinner nor permanently separated from their husbands.¹⁵⁹ The discriminatory provisions of the Dutch law, which excluded married women from an entitlement to unemployment benefits allowed unmarried women and married men to have such benefits without providing that they are breadwinners. The Human Rights Committee held that the law was discriminatory because the same condition did not apply to a married man.

4.3.4 Discrimination against women in the transfer of nationality

4.3.4.1 Sandra Lovelace vs. Canada: The author claims that she lost her rights and status as an Indian in accordance with Section 12 (1) (b) of the Indian Act, after having married a non-Indian but that an Indian man who marries a non-Indian woman does not lose his Indian status.¹⁶⁰ She claims that the Act is discriminatory on the ground of sex and contrary to articles 2 (1), 3, 23 (1) and (4), 26 and 27 of the Covenant. The Human Rights Committee acting under article 5(4) of the Optional Protocol to ICCPR disclose a violation of article 27 of the Covenant by Canada. It is a very good decision because; women should be able to retain their nationality in marriage without discrimination which is in line with the views of the Human Rights Committee in general comment no.19 that ‘no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage’.¹⁶¹

4.4 Conclusion

Discrimination against women continues to be a problem with women subjected to discriminatory practices by states parties, communities and individuals. The CEDAW Committee and the Human Rights Committee both have an individual communications procedure where in women can challenge discriminatory acts by states. Communications of discrimination against women in areas of health care services, employment, family and marital life, succession, in the transfer of nationality, trafficking in women for prostitution and in domestic violence have all been decided by the Human Rights Committee and the CEDAW Committee.

Under the CEDAW Committee, cases of discrimination against women in the areas of succession, employment, marriage and family life, trafficking in women for prostitution, domestic violence and in access to health care services have all been addressed. In terms of health care services, the CEDAW Committee in the communication of *A.S vs. Hungary* held that the state violated the author’s rights to health care services including reproductive care. However, in relation to communications decided under discrimination against women in family and marital life such as in *Groupe D’interet Pour le Matronyme vs. France*, *SOS Sexisme vs. France* and; in the communication of *B.J vs. Germany* which were all declared inadmissible for various reasons ranging from non-exhaustion of local remedies to the

¹⁵⁹ Communication no. 182/84

¹⁶⁰ Communication no.24/1977

¹⁶¹ Paragraph 7

authors not being victims. In terms of employment, the Committee declared in the communication of *Kayhan vs. Turkey* inadmissible for failure to exhaust local remedy. The same view was shared by the Committee in the communication of *Nguyen vs. the Netherlands*. However, in the communication of *Karen Tayad Vertido vs. the Philippines*, the Committee declared the case admissible. On domestic violence, the Committee held the communications of *Sahide Goekce vs. Austria*, *Fatma Yildirim vs. Austria* and *A.T vs. Hungary* admissible and; declared that the states violated the authors' rights. However, in the communication of *N.S.F vs. United Kingdom*, the Committee declared the communication inadmissible for failure to exhaust domestic remedy. In *Salgado vs. United Kingdom*, the communication was held inadmissible because the violation no longer existed in the case of transfer of nationality from mother to son. Furthermore, in *Cristina Munos-Vargas vs. Spain*, the communication was held inadmissible by the Committee because the violation occurred before the entering into force of the Optional Protocol to CEDAW. Also, in the communication of *Zhen Zhen Zheng vs. the Netherlands*, the Committee declared the case inadmissible for non-exhaustion of local remedies.

Likewise, the Human Rights Committee also has an individual complaint procedure where in, cases of discrimination against women have been addressed in areas of employment, family and in marriage, equality before courts and; in the transfer of nationality. In the communication of *Shirin and others vs. Mauritius*, the Committee held that the legislation enacted by the state was discriminatory against women. In terms of equality before the courts, the Committee in the communication of *Avenllanal vs. Peru* declared that the author was discriminated against and, that the law in the state party denied the author of her right. Also, employment cases have been decided by the Human Rights Committee as in the communications of *Broeks vs. the Netherlands* and *Zwaan de Vries vs. the Netherlands* where the Committee expressed the view that; the laws in the states were discriminatory against women in terms of the authors' entitlement to unemployment benefits. While, in *Sandra Lovelace vs. Canada*, the Committee declared that, there was a violation of the author's right to retain her nationality.

An inevitable conclusion drawn from this particular section is that; the Human Rights Committee and the CEDAW Committee have done enough to advance women's rights and protect women against discrimination in all spheres of life with groundbreaking decisions in domestic violence cases, employment and; in health care, family and marriage, in the transfer of nationality and in equality before courts.

Chapter Five: Conclusion and Recommendations

In this final chapter, after briefly summarising the conclusions flowing from each of the chapters, we will consider how the Convention of the Elimination of all forms of Discrimination against Women may be amended to function more effectively and how the implementation of the Convention could be supplemented. We then also briefly consider further recommendations.

5.1 Conclusion

Women constitute half of the world's population and, are the object of exploitation by states, community and families in all spheres of life. Since the first attempt at recognising women's rights by the United Nations in 1945, the organisation through the Commission on the Status of Women has attempted to counter a legacy of inequality between men and women and; one of the latest attempts to undo the effects of discrimination and inequality was the enactment of the Convention on the Elimination of all forms of Discrimination against Women in 1979. The Convention prohibits private and public discrimination against women and; outlaws discrimination against women in all spheres of society. Also, the Convention calls on the states parties and all persons to promote substantive equality. The Convention is a comprehensive document that seeks to promote equality between men and women and, it addresses the issues of non-discrimination against women in its entire ramification. The Convention addresses discrimination against women and provides for the equal enjoyment of civil, political, economic, social and cultural rights and; imposes obligations on states parties in respect of discrimination by private parties. However, the Convention's effectiveness has been greatly impacted by reservations by states parties in respect of certain provisions of the Convention. The Convention provides for a Committee which by virtue of the Optional Protocol adopted in 1999, can receive individual complaint of violation against states parties. The CEDAW Committee has rendered some useful pronouncements that effectively interpret the provisions of the Convention. In Africa, women continue to suffer from various forms of discrimination, with women lacking access to adequate health care facilities, employment and education.

The research examined the potential impact of the Convention on the Elimination of all forms of Discrimination against Women, in the fight against inequality and discrimination against women. In order to fully answer the question, chapter one which is the introductory chapter examined the background to the Convention on the Elimination of all forms of Discrimination against Women and discrimination against women in general. Also, the research questions, problem statement, limitation of the study, significance of study, research methodology, literature review were examined. An inevitable conclusion drawn from the section is that; the Convention is a comprehensive document that covers women's rights in all areas of life and; that the Committee established under CEDAW can accept complaints of violations of women's rights lodged against states parties through its individual complaint procedure.

In the research, chapter two dealt with specific forms of discrimination against women in three selected African states. The specific forms of discrimination against women were, in the areas of employment, health care, family and marital life, and political life and in education. And the states chosen were Nigeria, Rwanda and Egypt. The states were chosen because they represented different legal systems. Specific forms of discrimination against women were examined and we concluded as follows: (1) that women still suffer discrimination in access to education through low female enrolment and the restriction on particular areas of study, (2) that in employment, women are discriminated against through inequality in payment, restriction of women from some sectors of the economy and; in lower opportunities for women as compared to men, (3) that in relation to politics and public life, women still are discriminated against and they cannot easily access public office and; are underrepresented in parliament, cabinet and in the private sector except in Rwanda which has the highest rate of women in politics in the world, (4) that women are discriminated against in access to health care services including reproductive care which is characterized by lower female life expectancy, lower access to health care services especially in rural areas and; high mortality rate amongst female infants, (5) and that women in marriages and families are still not treated equally with men on issues of divorce proceedings, child support, polygamy and early marriage. As suggested in the chapter in relation to the three selected states, we concluded that (6) the reviewed states have not adequately implemented the Convention after examining state party reports to CEDAW Committee, non- governmental organisation reports, inter-governmental reports and the Concluding Observations of the CEDAW Committee on Nigeria, Egypt and Rwanda. We concluded that, (7) discrimination against women still existed in education, employment, health care services, politics and public life and; in family and marital life in these states.

In chapter three, we are mainly concerned with the instruments protecting women against discrimination at the global together with CEDAW and regional levels in relation to specific areas of discrimination against women such as in education, health care services, employment, family and marital life and; politics and public life. At the global level, the United Nations Charter, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the Convention on the Political Rights of Women, Equal Remuneration Convention, and; the Convention on the Rights of the Child were all analysed. Furthermore, the Convention on the Nationality of Married Women, Convention against Discrimination in Education, Convention concerning Discrimination in respect of Employment and Occupation, Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages and; the Convention on the Elimination of all forms of Discrimination against Women were also examined using general recommendations of the CEDAW Committee and, decisions of communications by the CEDAW Committee. While at the regional level, the Charter of the Organisation of African Unity, Constitutive Act of the African Union, African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and; the African Charter on the Rights and Welfare of a Child were examined using state party reports on Nigeria, Egypt and Rwanda to the African Commission on Human and Peoples' Rights

and; decisions of communication by the African Commission on Human and Peoples' Rights. We concluded as follows; (1) that the instruments effectively protected women from discrimination in education, employment, health care, family and marital life and in politics and public life and; the issue is the implementation of the instruments by states parties and, (2) that in terms of the Convention on the Elimination of all forms of Discrimination against Women, that the problem of reservations by states parties have greatly affected the effectiveness of the Convention.

In chapter four, we considered the jurisprudence of both the CEDAW Committee and the Human Rights Committee in relation to discrimination against women in all spheres of life including employment, health care services, succession, in the transfer of nationality, in the trafficking of women for prostitution, in family and marital life and; in domestic violence against women. Communications decided by the CEDAW Committee such as; Cristina Munos-Vargas vs. Spain, Salgado vs. United Kingdom, N.S.F vs. United Kingdom, A.T vs. Hungary, Nguyen vs. the Netherlands, A.S vs. Hungary, Kayhan vs. Turkey, B.J vs. Germany, Sahide Goekce vs. Austria, SOS Sexisme vs. France, Zhen Zhen Zheng vs. the Netherlands, Karen Tayag Vertido vs. the Philippines, Fatma Yildirim vs. Austria and; Groupe D'interet Pour le Matronyme vs. France were all examined using the general recommendations of CEDAW Committee. Also, communications decided by the Human Rights Committee were examined in relation to cases of inequality and discrimination against women such as; Shirin and others vs. Mauritius, Avenllanal vs. Peru, Sandra Lovelace vs. Canada, Broeks vs. the Netherlands and; Zwaan de Vries vs. the Netherlands using the general comments of the Human Rights Committee.

We concluded as follows: (1) that the Human Rights Committee and the CEDAW Committee had done enough to protect women against discrimination in all spheres of life with groundbreaking decisions and all that is required now is proper implementation of decisions. From analysing the CEDAW Committee jurisprudence, we concluded as follows; (2) that there are presently no communications to the CEDAW Committee from African women yet, (3) that most communications submitted to the Committee have been declared inadmissible for reasons ranging from non-exhaustion of domestic remedies to the facts occurring prior to the entering into force of the Optional Protocol in the state party complained against and; that most cases were lost on procedural errors, (4) that cases can only be filed on behalf of victims, but must have connection with them, (5) that complainant only need to exhaust reasonable, timely, effective and available remedies, (6) that most complainant must argue discrimination on the basis of sex at the national level to succeed, (7) that there are no complaints against China, the United States and India, (8) that issues so far decided by the Committee are restricted to employment, health care service, family and marital life, transfer of nationality, trafficking in women for prostitution, succession and domestic violence, (9) that the Committee is very strong in cases of domestic violence and, (10) that states can be held liable for the acts of a non-state party when, the state party fails to act.

On the implications of the CEDAW Committee jurisprudence for Africa, we concluded as follows: (1) that women in Africa can now successfully challenge cases of discrimination by

states and non- state party, (2) that the Committee is strong in cases of domestic violence which can greatly benefit African women, (3) that it's a tool for the promotion and protection of women's rights in Africa, (4) that it's a mechanism for holding the state accountable to its obligations under CEDAW, (5) that the jurisprudence improves awareness on women's rights, (6) that it gives women the opportunity to eliminate discrimination against them in all areas of life, (7) that cases of domestic violence and rape under the Optional Protocol to CEDAW can be, used as jurisprudence in Africa, (8) that the procedure advances women's rights as the Committee can handle cases of discrimination not specifically covered by the Convention as long as its discrimination under article 1 of the Convention, (9) that women now know what constitute a violation of a particular right, (10) that the remedies given will benefit other women indirectly through the enactment of legislation, (11) that the Committee can serve as an alternative to the African Court and the African Commission and, (12) that the Committee's work under the Optional Protocol gives rise to new opportunities to provide redress to victims of violations and to provide guidance for states parties and, others as to what the provisions of the Convention require.

To summarise the mini-dissertation in one sentence: the Convention on the Elimination of all forms of Discrimination against Women is unlikely to achieve its stated purpose of achieving change and promoting equality in society when its existence is not known by African women. With this in mind, we turn to recommendations.

5.2 Recommendations

As indicated in chapter two, we recommend that states parties should provide resources and the political will to implement measures they introduce in eliminating discrimination against women in their territories. While for those that have not yet introduced measures to promote equality between men and women, we recommend the following: (1) that in terms of employment, legislation promoting equality in payment and freedom in the choice of profession without restriction should be enacted and; where it has, recommend their effective implementation, (2) that in health care services, states should provide health care facilities especially in rural areas and services related to reproductive care should be easily available, (3) that in education, states should increase female enrolment in school through the introduction of scholarship schemes and quota systems, (4) that states should eliminate early marriages through the introduction of laws to combat child marriages, (5) that in politics, states should promote women's participation in public through the introduction of quota system, (6) that states in general should embody the principle of the equality of men and women in their national constitutions.

In relation to chapter three, there should be an amendment to article 28 of the Convention on the Elimination of all forms of Discrimination against Women on reservations to the Convention. Most reservations to the Convention are incompatible with the objective of the Convention and the Convention provides no specific procedure for determining incompatibility. We recommend that a reservation should be considered incompatible only if two-third majority of the states parties to the Convention objects to it. In relations to the

instruments protecting women against discrimination, there should be proper implementation of the instruments by states parties through the provisions of resources and infrastructures in the form of courts. The training of judges, practising lawyers, prosecutors and the police on women's rights and the mechanisms protecting women both at the regional and global levels and; enlightenment on the existence of the instruments to the general public through the organisation of seminars and carrying out research on women's rights.

As indicated in chapter four, we recommend the following: (1) that states parties should adequately implement the decisions of the Human Rights Committee and the CEDAW Committee through exploring with states parties to the Optional Protocol, the possibility of providing legislation to permit its views to be taken account of by national courts, where that is necessary to provide an adequate remedy to the complainant, (2) that states not yet party to the CEDAW Optional Protocol must as a matter of urgency accede to the Protocol, African Women's Protocol and the Optional Protocol to ICCPR, (3) that women must make sure they meet all requirements such as the exhaustion of local remedies before submitting their complaints to the Committee, (4) that women should get legal or organisational support when filing complaints against states parties, (5) that states parties should respect, protect, promote and fulfil the rights of women. In terms of promoting women's rights, state party should create awareness and enlightenment on the existence of CEDAW and the CEDAW Committee. In respecting women's rights, states parties should abstain and refrain from doing anything that would jeopardise women's rights. Also, in terms of protecting women against discrimination by states parties, women should be able to bring litigations against states. In terms of fulfilling the rights of women, states parties should enact laws that protect women and, the legislation should be implemented effectively, (6) that constructive criticism by activists can contribute to the improvement of the Committee's jurisprudence and practices, (7) that the Committee should protect women against discrimination in areas of marriage, nationality and in the trafficking of women for prostitution, (8) that African women should be economically empowered by states in order to fight cases of discrimination, (9) that capacity building programmes should be organised by non-governmental organisations and inter-governmental organisations, to create awareness on the existence of the various treaty bodies and their procedures, (10) that women's groups should lobby governments to provide policies and programmes to eliminate discrimination against women at all levels.

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