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**GENDER EQUALITY AND CHILD ABUSE IN THE UNITED NATIONS
AND AFRICAN UNION HUMAN RIGHTS TREATIES**

Master's Thesis

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INTRODUCTION

Gender equality and child abuse are critical issues that affect human rights. Gender equality means the availability of equal opportunities, responsibilities, and opportunities to all genders, in this context means, male, female, transgender and all gender diverse persons. The absence of gender equality often translates to some form of abuse physical, emotional, or psychological for the victims of gender inequality.

Prior to the recognition of gender equality as an international human right, there have been several abuses of women rights all over the world. For instance, the treatment of women in armed conflicts during and after the second world war remains a major dent in human history.¹ However, with the advent of the Universal Declaration of Human Rights, major developments began with respect to gender equality. The development of gender equality has not been without its advantage, for instance, it has been identified that the involvement of women in the economic efforts of a state contributes to a significant growth to economic development.² According to research, gender gaps in labour employment has been said to contribute to about 15% loss in the GDP of countries.³ Child abuse on the other hand refers to any act or behaviour that causes harm, injury, or distress to a child. This can include physical, emotional, sexual, or neglectful acts by a caregiver or adult. Child abuse can have long-term negative effects on a child's physical and mental health, social development, and overall well-being.

An interesting aspect of this thesis is the examination of gender equality as it pertains to the LGBTQ community. This is because most gender equality discourse is always in favour of women, particularly in the workplace and political space. For instance, the issues of gender equality in the workplace have not been entirely supportive or responsive to the plight of members of the LGBTQ community.⁴ One of the major reasons for the lack of adequate gender equality protection for the LGBTQ is due to the absence of a concrete legal framework, hence, this thesis seeks to identify the reasons for the lack of legislation with respect to the gender equality of persons belonging to the LGBTQ community in comparison to other 'popular' genders. Importantly, both the United Nations Human Rights Treaties and the African Human

¹ Buchowska N, Violated or protected. Women's rights in armed conflicts after the Second World War, *International Comparative Jurisprudence*, Volume 2, Issue 2, 2016, Pages 72-80,

² Teow, Y. J., Swati U., and Saloni G. 'PwC Women in Work Index: Closing the Gender Pay Gap. *PricewaterhouseCoopers AG* (2018).

³ Ferrant, G. and A. Kolev, Does Gender Discrimination in Social Institutions Matter for Long-term Growth? Cross-country Evidence. *OECD Development Centre Working Papers*, 2016 No. 330, OECD Publishing, Paris, <https://doi.org/10.1787/5jm2hz8dgl6-en> accessed 20 January 2023.

⁴ García J. C. P. and Otto K. B. Together: A Model for Women and LGBTQ Equality in the Workplace. *Front. Psychol.* (2019) 10:272. p. 8

Rights Treaties will be examined as they relate to the issues of gender equality with respect to members of the LGBTQ community.

The justification of the examination of both the United Nations and African Human Rights treaties is due to the fact that the two human rights systems offer peculiar but divergent views with respect to the drafting and the applicability of the human rights treaties to the theme of this research- gender equality and child abuse.

It is however important to note that this research offers two focal issues. First, this research is borne out of the quest to identify the approaches of the United Nations and the African Human Rights systems to the issues of gender equality on one hand and child abuse on the other hand. It is conceded that the concept of gender equality is very broad and can be discussed on a plethora of different academic approaches, however, the author of this thesis seeks to discuss a bit of each branch of gender equality through the lenses of the United Nations and African Human Rights treaties- the various branches being, right to education, right to employment, right to participate in politics, etc. Still on the first prong of this research, the author opines that the approaches of the United Nations Human Rights Treaties and the African Human Rights to the issue of child abuse are distinct but may have some similarities.

With respect to the second ambit of the research, in the context of these thesis, the author of this thesis is of the opinion that there exists a nexus between gender equality and child abuse as the absence of gender equality often serves as a precursor for child abuse. Amongst the various forms of child abuse that are prevalent in the society today includes sexual abuse- most times when an adult procures a child as a sexual object; physical abuse- which involves inflicting some form of physical damage on a child; neglect and maltreatment- which involves abandoning a child for some parochial reasons or the other; institutional abuse- which involves such occurring in institutions or group homes for children of a particular class. The author will then explore an analysis of the protection of LGBTQ through the lens of gender equality and child abuse.

Consequently, the author of this work will carry out a comparative analysis of the human right regime under the United Nations and the African region in order to examine the responses, legal protection and enforcement mechanisms to gender equality and child abuse.

The development of human rights has been argued to be largely Eurocentric for some reasons.⁵ This may be likely due to for instance, in an American case that lives in infamy, Africans were not considered citizens to be entitled to human rights. The dictum of the judge in the infamous case defines Africans thus.

[a]s a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subjected to their authority, and had no rights or privileges but such as those who held the power, and the government might choose to grant them.⁶

Another instance of the eurocentrism of the human rights discuss is the fact that no African contributed to the construction of the Universal Declaration for Human Rights.⁷ This was majorly because most African countries were not independent as at the time the United Nations Declaration on Human Rights was being formulated in 1948. Hence, the said document was created without any major inputs by Africans. Invariably, the human rights discussion is riddled with western values which most Africans consider not to align with their realities. For instance, several western scholars have been accused of claiming that human rights are a western construct.⁸ Invariably, the importance of this study is to establish that despite the fact that the United Nations Human rights treaties recognized gender equality and child abuse as major issues, same can be found in African Human Rights Treaties. In fact, this research will ascertain by way of comparative analysis the most practical treaty regime between the two with respect to recognizing gender equality and child abuse as it relates to the recognition of rights, the establishment of sanctions and the enforcement mechanism of the said rights.

About a billion children within the ages of 2-17 years have been subjected to child abuse due to their gender.⁹ For instance, in several African societies and homes, most female children go through several forms of abuse due to their sexuality. For example, female genital mutilation (FGM) remains one of the cruel practices in which a female child is discriminated against and abused on the basis of gender. In cases where a child identifies as other gender variants like lesbian, gay, bisexual, transgender or queer, the abuse becomes extreme as most cisgender

⁵ Joseph S., 'A Question of Narration: The Voice in International Human Rights Law' Human Rights Quarterly Vol. 19 No. 2, 1997, p. 420.

⁶ *Dred Scot v Sanford* 15 L.Ed. 691 and 60 U.S. (19 How.) 393 at 404 (1857).

⁷ Perry M. J., 'Are Human Rights Universal? The Relativist Challenge and Related Matters' Human Rights Quarterly Vol. 19 No. 3, 1997, 461 at pp. 485

⁸ Donnelly J., 'Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights', American Political Science Review Vol. 76, 1982, p.310

⁹ Hillis S., Mercy J., Amobi A. and Kress H., 'Global Prevalence of Past-Year Violence Against Children: A Systematic Review and Minimum Estimates', Paediatrics, 2016 vol. 137, no. 3, p. 23

persons do not accommodate the reality of gender fluidity. Hence, issues of abandonment, neglect and emotional damage becomes rife and may jeopardise a child's future as a full member of society. Considering the above, gender equality and child abuse need to be addressed in tandem. It is important to identify adequacy of both universal (UN) and regional human rights frameworks, in this thesis African, to deal with the problems. There have been several insinuations as regards the enforcement of human rights all over the world through the instrumentality of the United Nations. For instance, the universality of human rights called into questions the blanket applicability of human right principles to all persons across the entirety of the globe hence, the advent of regional human rights treaties like the African Charter on Human and Peoples Rights made by the African Union.¹⁰ Another problem encountered by the human rights discourse is the lack of wherewithal or simply put, the inability of the United Nations to enforce human rights across the world without faux pas demonstrations of enforcement.

Concurrently, the same issues besetting the United Nations with respect to the enforcement of human rights seem to affect the African human rights systems too as the continuous abuse of human rights remains a worrying trend in Africa. Again, there is no universal protection of the rights of LGBTQ and even in the African system as well. This thesis seeks to analyze the legal responses of the United Nations human rights system and the legal responses of the African human rights system to the issues of gender equality and child abuse in relation to LGBTQ.

The aims and objectives of this research are (i) To analyze the various United Nations human rights treaties and laws that bother on child abuse and gender equality; (ii) To analyze the various African human rights treaties and laws that bother on child abuse and gender equality; (iii) To examine the United Nations Human Right system's response to the issues of gender equality and child abuse; (iv) To examine the African human right system's response to the issues of gender equality and child abuse; and (v) To examine the nexus between gender equality and child abuse and LGBTQ rights.

The research questions which this research work intends to answer are (i) What are the legal frame works governing gender equality and child abuse in the United Nations? (ii) What is the legal frame works governing gender equality and child abuse in Africa? (iii) Is there a link between gender equality, child abuse and LGBTQ? (iv) Which human rights system, between

¹⁰ African Charter on Human and Peoples Rights, O.A.U. Doc. CM/1149 (XXXVII) at 2 (1981)

the African human rights system and the United Nations Human rights system, provides a more practical and comprehensive measures to address gender equality and child abuse issues?

The research methodology adopted is a qualitative and analytical method to explore existing literature in this area. Information will be collected from journals, books, and case law. This thesis is essentially going to be a library-based research work and it will be basically analytical and evaluative. Comparative approach will be used to analyse the legal framework of International Human Right system as it applies to gender equality and child abuse in the United Nations and Africa in relation to LGBTQ.

LITERATURE REVIEW

International obligations exist to ensure that women are supported to enjoy their basic fundamental human rights predicated upon gender equality. Chief amongst this principle is the principle of freedom from discrimination. The issue of gender equality is multi-faceted as it can be discussed on the ambit of women and girls while it can also be discussed with respect to the diverse genders that permeates the intellectual space of the world. According to statistics times, the population of males in the world as of 2021 was 3.97 billion which accounts for about 50.42% of the population of the world,¹¹ while the population of females was pegged at 3.905 billion which accounts for about 49.58% of the world population.¹² The statistics aforementioned is important in order to appreciate the number of persons directly affected by the issues of gender equality. It has been argued that women and girls face inequality predicated upon their gender, hence, inequality exists in the areas of education, job opportunities and in fact, access to health care. The issues of gender equality have been on the front burner of intellectual discourse over the years and same gathered high tractions that it was included as part of the Millennium Development Goals (MDG's).¹³ Naila identified the significance of gender equality as it related to the Millennium Development Goals of the United Nations.¹⁴ She identified education as the focal point of the Millennium Development Goals and opined that the issues of gender equality cannot be narrowed to just disparities in educational opportunities. However, Naila eventually widened the scope of Millennium Development Goals as it relates to women by identifying three key indicators to measure gender equality goals as follows;

¹¹ Times, Statistics. 'Gender ratio in the World.' Dalam <https://statisticstimes.com/demographics/world-sex-ratio.php>. Diakses pada 10 (2021).

¹² *Ibid*

¹³ Kabeer, N. 'Gender Equality and Women's Empowerment: A Critical Analysis of the Third Millennium Development Goal 1.' *Gender & Development* 13, no. 1 (2005): p. 19.

¹⁴ Kabeer N. *Ibid* p.21

education, employment and political participation.¹⁵ Naila noted that in the event that gender disparity in the aspect of education is abolished, education will become more accessible to women and girls while their participation in politics will widen due to their better placement with respect to knowledge gained through the means of education. The final indicator is the aspect of employment as Naila argued that the realization of gender equality will ensure that women will gain easy access to employment opportunities. It is, however, important to note that Naila did not widen nor broaden her scope to other areas of gender equality, for example, equal access to health care. Naila also failed to include the rights of the LGBTQ+ community in her analysis of gender equality. It is important to note that the knowledge gap in the research of Naila will be addressed during the course of this work.

Gender equality has also been connected to climate change as climate change has adverse effects on men and women alike. However, in traditional African societies, climate change has amplified the gender inequalities that exists in the said societies. Chidiebere in her research noted that climate change has a more damaging effect on women in traditional African societies.¹⁶ Chidiebere expatiated that due to climate change, rivers and streams which form the primary source of drinking and cooking for African societies have become dried up. Trees that served as a source of firewood for women have also continued to face terrible effects of desertification which in turn dissipates the number of trees available for use as firewood for cooking. Hence, women, being the natural provider of drinking water and cooked food have been forced to go extra miles in sourcing for firewood and drinking water. Chidiebere noted that this role foisted on women exhibits the inbuilt patriarchy of the typical African society.¹⁷ This is because men and women should be saddled with equal responsibilities of fending for their family and not a lopsided arrangement that sees women alone bearing the brunt of climate change.

With respect to the rights of members of the LGBTQ community, it is opined that their rights are not adequately catered for by some of the various United Nations and African Human Rights Treaties. Garcia and Otto identified in 2019 that women rights in the workplace as it deals with gender equality receive more attention while the gender equality rights of members of the LGBTQ community receives virtually no attention.¹⁸ Generally, women rights have been on the front burner of gender equality discourse in the sphere of international human rights,

¹⁵ Kabeer N. *Ibid* p.13-24

¹⁶ Onwutuebe, C. 'Patriarchy and Women Vulnerability to Adverse Climate Change in Nigeria.' *Sage Open* 9, no. 1 (2019): 2158244019825914.

¹⁷ Onwutuebe C. *Ibid*

¹⁸ García J. C. P. and Otto K. B. *Ibid*. p.10

however, with the evolution of the gender discourse and the progressive nature in human reasoning, it has become pertinent to introduce a new dimension to gender as members of the Lesbian, Gay, Bisexual, Transgender and Queer communities continue to clamour for a recognition of their rights. Garcia and Otto, due to this new dimension identified in their paper that human resource officers of companies tend to consider the rights of women, white and coloured persons as paramount in the gender equality discourse rather than the rights of members of the LGBTQ community.

One of the focal points of gender equality is the issue of access to health care, due to gender disparities and inequality in gender, access to health care of various genders seem to differ on various points.¹⁹ According to Blosnich, the members of the LGBTQ community are at risk of lower social economic status and poor health status.²⁰ This is due to the fact that the disparity in gender affects the members of the LGBTQ community such that they are discriminated against with respect to employment

Gender discrimination was identified to start from birth.²¹ Before delving into the core of gender equality, the organization defined gender inequality as discrimination on the basis of sex and gender with the aim of favouring one gender as against the other.²² The organization now made an important point when they noted that gender inequality starts from childhood and the after effect is that it limits the potentials of a child in the society today.²³ The organization further identified that child abuse is a resultant effect of gender inequality as children are discriminated against right from birth as a result of their gender. In fact, such inequality results in the withholding of resources and eventually limits the scope of the achievements of children in the society upon attaining adulthood. Gender inequality has been identified as the main cause of child marriage, hence, the girl child who is forced to get married at a very early age is exposed to various diseases and abuses such as death during childbirth, cervical cancer, and various sexually transmitted diseases.²⁴

¹⁹ Jennings L, Barcelos C, McWilliams C, Malecki K. Inequalities in Lesbian, Gay, Bisexual, and Transgender (LGBT) Health and Health Care Access and Utilization in Wisconsin. *Prev Med Rep.* 2019 Apr 1; 14:100864. doi: 10.1016/j.pmedr.2019. 100864.

²⁰ Blosnich J.R., Farmer G.W., Lee J.G., Silenzio V.M., Bowen D.J. Health Inequalities Among Sexual Minority Adults: Evidence from Ten US States, 2010. *Am. J. Prev. Med.* 2014;46(4):337–349.

²¹ Save the Children, 'Gender Discrimination; Inequality Starts in Childhood' <https://www.savethechildren.org/us/charity-stories/how-gender-discrimination-impacts-boys-and-girls> Accessed on 7th December, 2023

²² *Ibid*

²³ *Ibid*

²⁴ Ugo A, 'The Implications of Child Marriage' This Day Newspaper, January, 2023, <https://www.thisdaylive.com/index.php/2022/07/14/the-implications-of-child-marriage/#>. accessed on 17TH January, 2023

The scope of this research is limited to the examination of some United Nations human rights treaties and the African Human Rights treaties. The author of this work will also take particular interest in Nigerian legislations as they relate to gender equality and child abuse as African examples of the incidences of the law.

The scope of this work was chosen because the United Nations and African treaties on international human rights as it relates to gender equality and child abuse are unique in their similarities and noted differences. While the United Nations Human rights treaties present a generalized view of gender equality and child abuse, the author of this work is of the opinion that the African human rights system provides an ample opportunity in examining a different variety of human rights as Africa remains unique due to its culture and norms which have found a way into its legal systems. A noted example is that the African Charter on Human and Peoples' rights while providing for the rights of persons also provides for the duties of persons. This noted uniqueness is not readily found in typical international human rights treaties.

Keywords: Gender equality, Child abuse, LGBTQ+, Human Rights

1. LEGAL FRAMEWORK OF GENDER EQUALITY AND CHILD ABUSE

Gender equality and child abuse are two important concepts in the field of human rights as they both possess heavy presence in the body of international laws and treaties. Gender equality in international law has a notorious history due to its uniqueness and specificity in providing for the rights of the vulnerable gender in the world.

The focus of this chapter will be the legal framework of gender equality and child abuse under the United Nations Human Rights treaties and African Union Human Rights Treaties. The United Nations human rights treaties that address issues of gender equality and child abuse have been carefully selected by the author of this work in order to show a clear expose on the protection, implementation and enforcement of gender equality in international law. Like wisely, the United Nations treaties that protects children from child abuse together with the enforcement of children rights will be discussed.

On the other hand, due to its peculiarity and the ability to offer a diverse view, the African Union Human rights treaties will be examined as they relate to child abuse and gender equality.

1.1. UNITED NATIONS HUMAN RIGHTS INSTRUMENTS

1.1.1. UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights²⁵ is the foremost international human rights treaty adopted by the United Nations General Assembly. Touted as one of the most comprehensive international human rights treaties in nascent history, the Universal Declaration of Human Rights is in a class of its own. Originating from the draft resolution submitted by Haitian Senator Emile Saint-Lot.²⁶ The sad experience of the 2nd world war made the world much more responsive to human rights as several dastardly human rights violations were carried out on all sides of the war. The issues of Korean comfort women who were raped and sexually exploited with reckless abandon was a major human rights issue as women were reduced to sexual objects by the Imperial Japanese Army.²⁷ The child abuse which occurred during the second world war was also a major eye opening to the barbarity and non-discrimination in war. For instance, there were thousands of children who faced unwholesome conditions at concentration camps for

²⁵ Universal Declaration of Human Rights (UDHR), Paris, 1945 [December 10, 1948]

²⁶ Spickard J. V., 'The Origins of the Universal Declaration of Human Rights' 2021, University of Redlands <http://bulldog2.redlands.edu/fac/Spickard/OnlinePubs/OriginUDHR.pdf> accessed on 5th January, 2023

²⁷ Hankyoreh, 'The "Comfort Women" Issue is an issue of human rights of victimized Asian women' May 3, 2022 https://english.hani.co.kr/arti/english_edition/english_editorials/1041442.html Accessed on 4th January, 2023

holocaust victims in Nazi German or Nazi occupied areas.²⁸ All these issues and many more, too numerous to mention, originated the importance of having a codified treaty containing basic human rights.

As it relates to gender equality, the Universal Declaration of Human Rights provides in Article 1 that all Human Beings are born free and equal with dignity and rights. This opening article underlines the essence of humanity and tries to amplify the equality of all persons. Article 5 of the UDHR provides that no one shall be subjected to cruel, inhuman, and degrading treatment. Hence, this article postulates that no person including children should face any form of abuse. On the other hand, Article 7 provides again for the equal treatment of all persons before the law and the need to jettison any form of discrimination. Article 16 further grants men and women the equal rights as to marriage. To further amplify the incidents of equality, Article 26 provides that everyone has the right to education, equally. Hence, a particular gender should not be discriminated against to the extent of denying them education.

From the foregoing provisions of the Universal Declaration of Human Rights, it is clear that the UDHR provides a lot of protection for the principle of equal right while also protecting children from child abuse. However, it is not without its failings. Firstly, it does not clearly recognize the rights of the LGBTQ+ community. Secondly, the UDHR did not specifically protect the rights of children or provide for their unique needs. Lastly, it is not a legally binding instrument, but rather a common standard of achievement for all peoples and all nations. However, the principles enshrined in the UDHR have informed and shaped numerous subsequent human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which have binding legal force upon ratifying states.

1.1.2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are cumulatively referred to as the International Bill of Rights. This is due to the fact that the drafting of the aforesaid treaties all occurred complementarity during the same period. The International Covenant for Civil and Political Rights²⁹ is worthy of note in the discourse of gender equality and the protection from child abuse. The treaty provides that all persons within

²⁸ Lev-Wiesel R, and Amir M, 'Holocaust Child Survivors and Child Sexual Abuse' Journal of Child Sexual Abuse, Volume 14 Issue 2, 2005 Pg 69

²⁹ International Covenant on Civil and Political Rights (ICCPR), 1966. 999 U.N.T.S., 171-272. ICCPR 1966

the territories of the state party are entitled to their rights without prejudice to their gender, sex, colour, religion, birth or other status.³⁰ The presence of other status in this particular article gives latitude to the protection of the rights of persons of the LGBTQ+ community. Likewise, in recent times, the treaty has been interpreted to support gender equality in the spirit of article 2. The treaty goes a step further to mandate the provision of remedy to persons whose rights have been violated under the said provision.³¹ In continuation of the right to gender equality, the treaty provides that everyone shall be treated equally before the law without prejudice to their gender.³² Article 3 of the said treaty provides further that gender equality shall be maintained between men and women in the enjoyment of their civil and political rights as provided by the treaty. The treaty also prohibits torture, cruel, inhuman, and degrading treatments.³³ Article 27 offers further protection for minority rights, hence persons who belong to minorities are expected to enjoy equal rights and protection as much as those who are in the majority. It is opined by the author of this thesis that, persons who are members of the LGBTQ+ community belong to the minority in every society; therefore, the provisions of this treaty may be interpreted to include protection of such persons from abuse, disadvantage and cheating.

As of September 2021, 173 state parties have ratified the ICCPR.³⁴ The Human Rights Committee, a body of independent experts, monitors the implementation of the treaty.³⁵ This monitoring includes reporting procedures, individual communications, and inter-state complaints mechanisms.³⁶

Specific provisions in the ICCPR directly address gender equality and child protection, such as Article 23, which stipulates the equal rights of men and women during marriage and its dissolution, and Article 24, which protects the rights of children. General Comment No. 28 issued by the Human Rights Committee provides detailed guidance on the interpretation of Article 3 regarding gender equality.³⁷

³⁰ Article 2, ICCPR

³¹ *Ibid*

³² Article 14 & 26, ICCPR

³³ Article 7, ICCPR

³⁴ United Nations Treaty Collection, International Covenant on Civil and Political Rights, accessed September 2021.

³⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Committee, accessed September 2021.

³⁶ OHCHR, Monitoring the Core International Human Rights Treaties: Human Rights Committee, accessed September 2021.

³⁷ HRC General Comment. 28: Article 3 (The Equality of Rights Between Men and Women). *UN Doc CCPR/C/21/Rev 1* (2000).

The ICCPR has been invoked in several cases to protect the rights of women, children, and LGBTQ+ individuals, an example is in the case of *X v. Colombia* (Communication No. 1932/2010),³⁸ a transgender woman filed a complaint against the Colombian State before the United Nations Human Rights Committee (HRC). The complainant claimed that the state violated her rights under Article 17 (right to privacy) and Article 26 (right to non-discrimination) of the International Covenant on Civil and Political Rights (ICCPR) due to the requirement to undergo surgical procedures before being allowed to change her legal gender. In its views adopted on October 30, 2012, the HRC determined that the requirement for surgery was indeed a violation of the complainant's rights under Article 17 of the ICCPR. The Committee further found that the requirement amounted to discriminatory treatment based on gender identity, violating Article 26. As a result, the HRC recommended that Colombia take appropriate measures to remedy the situation, including providing the complainant with adequate compensation and amending its legislation to ensure that similar violations would not occur in the future.

However, the ICCPR has faced criticisms and challenges, such as reservations made by certain state parties, inconsistent implementation, and limited enforcement mechanisms. In her book chapter, Anja Seibert-Fohr discusses the challenges posed by reservations to the ICCPR.³⁹ Reservations are unilateral declarations made by states when they ratify a treaty, seeking to exclude or modify the legal effect of certain provisions. Seibert-Fohr focuses on the reservations made by certain state parties, which may undermine the object and purpose of the ICCPR.⁴⁰

For example, some states have made reservations to Article 6 (right to life) concerning the death penalty, and Article 7 (freedom from torture) concerning corporal punishment. These reservations may limit the scope of human rights protections and lead to inconsistent implementation across state parties. Moreover, the ICCPR faces challenges in enforcing compliance due to its reliance on state cooperation and the limited authority of the Human Rights Committee to address non-compliant state behavior.

The ICCPR interacts with other international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the

³⁸ HRC, Communication No. 1932/2010, *X v. Colombia*, CCPR/C/106/D/1932/2010.

³⁹ Seibert-Fohr A, 'Reservations to the International Covenant on Civil and Political Rights: A Unilateral Declaration Incompatible with the Object and Purpose of the Treaty, in Ziemele, Ineta, ed. *Reservations to Human Rights Treaties and The Vienna Convention Regime: Conflict, Harmony or Reconciliation*. Brill, 2004.

⁴⁰ Ziemele I. *Ibid* p.58-60

Convention on the Rights of the Child (CRC), to ensure a holistic approach to gender equality and child protection.

1.1.3. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The rights of women have always been a fundamental objective of the United Nations. This is owing to the fact that women contribute to almost half of the world's population. Females contribute at least 49.58% to the population of the world,⁴¹ hence, the protection of the rights of women is the protection of a large number of the world's population.

Before the advent of the CEDAW,⁴² there have been several international human rights instruments that have been protecting the rights of women such as the Convention on the Political Rights of Women,⁴³ Convention on consent to Marriage, Minimum age of Marriage and Registration of Marriages.⁴⁴ These international instruments were orchestrated by the Commission on the Status of Women (CSW)⁴⁵ which was created as a sub-commission to the United Nations Human Rights Commission. After much work done by the CSW, the first draft of the CEDAW was submitted in 1976⁴⁶ but it was not until 1981 that the convention came into force.

According to Article 1 of the convention, the basic purpose of the CEDAW was to ensure that all forms of discrimination against women was eradicated. The CEDAW took a giant step by making sure that states were encouraged to pursue policies that will ensure that all forms of discrimination against women were abolished.⁴⁷ The policy of equality of men and women continued to play a key and pivotal role in the spirit of the CEDAW as the fundamentals of the drafting committee was to ensure that women, no matter their marital status are placed on an equal pedestal as men in all areas of economic, social, political and cultural life.

One important area which CEDAW seeks to achieve equality is the area of political voting.⁴⁸ Hence, all forms of discrimination against women in the aspects of voting rights were sought

⁴¹ Statistics Times, "Gender Ratio in the World," accessed January 7, 2023

⁴² Convention on the Elimination of All Forms of Discrimination Against Women 1979. 1249 U. N. T.S 13. CEDAW 1979

⁴³ Convention on the Political Rights of Women, 1952

⁴⁴ Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages, 1965

⁴⁵ Women, U. N. "Short history of CEDAW convention." *United Nations Entity for Gender* (2009) retrieved from <https://www.un.org/womenwatch/daw/cedaw/history.htm> accessed 12th February 2023.

⁴⁶ *Ibid*

⁴⁷ Article 2, CEDAW

⁴⁸ Article 7, CEDAW

to be eliminated. For example, in Afghanistan, Uganda, Pakistan and Saudi Arabia, women's political participation through voting is greatly curtailed by either government policy of targeted harassment by the populace. Closely related to the ability to vote in an election is the ability to participate in the political process through election contests; the treaty seeks to bring about equality in this aspect by providing that state parties to the treaties must ensure an equitable avenue to ensure that women are participants in seeking elective offices.⁴⁹ In 1995, the United Nations organized the 4th world women's conference in order to fashion out a clear plan for the protection and advancement of the equality of women in the world; at the said conference, 30% affirmative action was marked as the minimum percentage of women participation in politics.⁵⁰ In successive world women conferences, the quota for women participation in politics is being regularized and implementations encouraged by member states. The treaty also seeks to ensure equality of women in the fields of the freedom to change nationality,⁵¹ the right to education⁵² and employment.⁵³

The treaty also tries as much as possible to prevent child abuse as an incident of early marriage when it provided that any such betrothal shall have no legal force.⁵⁴ Child marriage and forced marriage are a popular occurrence in several parts of the world. This has led to several young girls losing their lives as a result of early pregnancy even before attaining puberty. Hence, the treaty seeks to abolish this dastardly act in order to prevent the abuse of the young girls in such unwholesome marriage to older men.

Family/marriage being one of the basic units of Human society, the Convention on the Elimination of all forms of Discrimination against women, pays special attention to marriage due to the obvious discriminatory practices which have been inherently present in diverse societies.⁵⁵ For instance, the ownership of properties, employment choices, child-bearing choices and the allocation of marital roles continue to lay bare the inequalities amongst men and women in marriages due to the fact that these various marital issues continue to shape the economic output, career advancement and eventual life achievements of women as against

⁴⁹ Article 8, CEDAW

⁵⁰ Daniels P. and Lemonds D., 'The Fourth World Conference on Women in Beijing,' Soroptimist's Arena, 2021, <https://www.soroptimistinternational.org/the-4th-world-conference-on-women-beijing-1995/> accessed (7.01.2023).

⁵¹ Article 9, CEDAW

⁵² Article 10, CEDAW

⁵³ Article 11, CEDAW

⁵⁴ Article 16, CEDAW

⁵⁵ Halperin-Kaddari, R., CEDAW Commentary Final Draft: Discrimination against Women (2021). Available at SSRN: <https://ssrn.com/abstract=4060102> accessed (7.01.2023)

men.⁵⁶ Another nuance with respect to the provision of article 16 of the Convention on the Elimination of all forms of discrimination against women is the fact that the committee did not initially provide for same sex marriage, hence, it became a matter of inadequacy in the provisions of the law as it relates to marriage when the issue of same sex unions arose, however, state parties in reality have been encouraged to ensure that equality is achieved in the instance of same sex marriages.⁵⁷

Another important issue with respect to marriages as they present gender equality issues is the categorization of marriage by the Convention on the Elimination of all forms of discrimination against women. For instance, unregistered/customary marriages present special peculiarities as they relate to the gender equality of the parties involved. In various societies across the world, traditional Asian, European and African societies, unregistered or customary marriages are not generally recognized by the domestic laws of a state, hence, it is important to note that the issues of inequality arise often times in such marriages. For example, since such marriages are unrecognized by the state parties, various forms of gender abuse are swept under the carpet. For instance, under Nigerian customary laws, women are generally not allowed to inherit property. This is due to the fact that the customary laws are rooted in the ancient customs and traditions of the society. Hence, in response to the various experience of each community, customary law is fashioned to reflect the various behavioural attitudes of communities. In the case of *Suberu v Jibowu*⁵⁸ Court held that:

“It is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband’s property since she herself is like a chattel to be inherited by a relation of her late husband.”

Hence, by virtue of the customary laws of the Yoruba People of Southwestern Nigeria, a wife is not allowed to inherit her husband’s property under customary marriage due to the fact that the wife is considered as parts of the chattels of the deceased husband. As a result of the customary laws of succession and inheritance, the inheriting male who is entitled to the properties of the deceased male has the right to inherit the properties of the deceased together with his wife. This is the reality of most customary laws in Nigeria before the intervention of the courts. Likewise, customary laws of marriage in Nigeria equally provides that the female children of a deceased person are not entitled to inherit the properties of their deceased father

⁵⁶ Banda F., *Women, Law and Human Rights: An African Perspective*, London: Hart Publishing 2005, p. 23

⁵⁷ Concluding Observation of the Committee on the Elimination of Discrimination Against Women, Singapore, CEDAW/C/SGP/CO/4 on July 22, July 2011, para 35

⁵⁸ (1957) SCNLR 45

due to the primogeniture rule that states that the eldest male member of the nuclear family inherits the deceased father or in his absence, the eldest male of the extended family of the deceased person to the outright detriment of the female children. These issues of gender inequality reinforce the fact that unregistered/customary marriages in various jurisdictions poses a serious challenge to achieving gender equality and balance in various societies. It is however important to note that the Nigerian judiciary has stepped in to remedy the situation through the domestic courts in Nigeria. In the case of *Ukeje v. Ukeje*⁵⁹ it was held; thus, “the Igbo native law and custom which prohibited women to share of her deceased father’s estate is void as it conflicts with section 42 (1) & (2).”⁶⁰

Likewise, in *Mojekwu v. Mojekwu*,⁶¹ the disinheritance of females was struck down under the repugnancy principle by the unanimous judgment of Enugu Division of Court of Appeal. The basis of the decision of the court in this case was that the priority of the male sibling of the deceased to inherit the deceased property to the exclusion of the female children of the deceased amounts to discrimination under the law. Sadly, not all cases of gender inequality make it to the court due to many factors which include illiteracy, poverty, etc, hence, various gender disparities are still swept under the carpet. It is however important to equally note that customary and unregistered marriages are shaped by the experiences of the societies and the experiences of the society constitutes the pillars of the society, hence, gender equality can only be achieved in circumstances where the domestic laws of nations recognize such marriages by modifying them to be in consonance with the laws of the land.

Another important categorization of marriages is polygamy. According to the committee on gender equality, polygamy is seen as unequal and should be discouraged/prohibited in every way.⁶² Due to the number of women who are in polygamous marriages, some laws by nations have been promulgated to ensure that first wife in polygamous marriages give consent before a new wife is married.⁶³ By virtue of recommendation 21 and 29 of the committee on the elimination of discrimination against women, polygamous marriages are absolutely against the letters of the Convention on the Elimination of Discrimination Against Women, however, the recommendation acknowledges the need to respect and protect the rights of women who are in such polygamous marriages. Rather certainly, the committee maintains that polygamy is against

⁵⁹ (2014) SC 224/2004

⁶⁰ 1999 Constitution (as amended)

⁶¹ (1997) 8NWLR (Pt. 512) 283

⁶² Concluding Observation of the Committee on the Elimination of Discrimination Against Women, Bhutan, CEDAW/C/BTN/CO/7 (2009) para 34 (reiterating A/59/38, 30th Session (2004) para 116)

⁶³ Tanzania Law of Marriage Act 1971, Sections 18–22

the intendments of the convention on the elimination of all forms of discrimination against women. It is opined by the author of this thesis that the recommendation by the said committee is against the various realities obtainable in various parts of the world. For instance, the committee failed to acknowledge the fact that polygamy is part of the religious fundamentals of some specific religions around the world. For example, the Islamic religion makes it legal to marry multiple wives in specific circumstances, hence, the committee classifying such marriage as illegal and prohibited due to gender disparities is a direct attack on the fundamental beliefs of Muslims all around the world.

Another categorization of marriage is the child/forced marriage. Due to the inability of the child to give legal consent, the child marriages are deemed to be forced marriages and this are prohibited by virtue of Article 16 of the Convention on the elimination of all forms of discrimination against women. Cases of child abductions for the purposes of marriage abound in international discuss particularly in Asia, Africa, and South America. This forced marriage obviously tends to cause a lot of damage on the child as result of the abuses encountered as a direct consequence of the gender inequality.

With respect to same sex couples, the committee in its concluding recommendations tend to recognize same sex couples sparingly. The committee in some instances advice that the options of civil partnerships be made open to same sex couples for the purpose of legitimacy even though marriage may not be adopted. Furthermore, the non-recognition of some forms of marriage which may cause discrimination with respect to some women, for instance, lesbian couples has been discouraged by the recommendation of the committee.

Pluralistic societies tend to present a special form of uniqueness with respect to the legal nuances of gender equality. Pluralist societies are those societies that possess various forms of legal systems. For example, Nigeria possesses the common law, Islamic law and the customary law systems. Although the various jurisdictions of the said legal systems are clearly spelt out by the constitution, gender equality tends to overlap across all the said jurisdictions. Importantly, the laws that govern marriage was generally categorized as personal status laws, hence, the laws that regulate them most prevalently are the personal laws which differ from the general laws of the land that applied to every citizen. Hence, the customs and religions of a community are the laws that govern marriage, and such is legally sanctioned. The state party reports on the convention on the elimination against women and the various recommendations shows quite abundantly that the various laws based on the customs and religions of communities are generally discriminatory against women. As the various constitutional laws of the state are

segregated from the customary and religious laws of the state, the committee has recommended that the constitutional laws ought to be amended to prohibit gender inequality even in the instances of the customary and religious laws that tend to discriminate against women.⁶⁴ It is further imperative as recommended by the committee for the independent states to show workings of their actual respect for the freedom of discrimination for women as it has become evident often times that despite the inclusion of these rights in the constitution of the state, there are no evidence of the actual legislative steps in ensuring that family laws are promulgated to reflect the rights of freedom from discrimination. For instance, in the case of E.S and S.C v United Republic of Tanzania, it was identified by the committee that despite the fact that there existed remarkable changes in the Tanzanian constitution with respect to gender equality and discrimination against women, the customary family laws of the Tanzania has not reflected a change in their discriminatory treatment of widows.⁶⁵

The Convention on the Elimination of All Forms of Discrimination Against Women is overseen by a group of impartial specialists known as the Committee on the Elimination of Discrimination Against Women (CEDAW).⁶⁶ The most significant human rights pact for women is CEDAW, which was adopted by the UN in 1979. The CEDAW Committee is made up of twenty-three independent, international specialists on women's rights. State parties to the Convention are obligated to eliminate discrimination, ensure women's full development, and allow CEDAW Committee to monitor implementation. The Committee also reviews State party reports to address its concerns and recommendations, as mandated by the Optional Protocol.⁶⁷ The Committee is mandated to receive communications and initiate inquiries into violations of women's rights, and to formulate general recommendations.⁶⁸ Women all over the world can use the CEDAW treaty as a tool to alter their daily lives. The CEDAW has proven incredibly effective in preventing the negative repercussions of discrimination, such as violence, poverty, a lack of legal protections, the denial of inheritance, property rights, and credit access.

The treaty has assisted in the growth of property rights and political engagement in Costa Rica; citizenship rights in Botswana and Japan; inheritance rights in Tanzania.⁶⁹

⁶⁴ Concluding Observation of the Committee on the Elimination of Discrimination against Women, Zambia, CEDAW/C/ZMB/CO/5- 6 (2011) paras 41 and 42(a)

⁶⁵ E.S and S.C v United Republic of Tanzania (CEDAW/C/60/D/48/2013), 13 April 2015, para 7.6

⁶⁶ Article 17 of CEDAW

⁶⁷ UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83

⁶⁸ Article 2 of the Optional Protocol to the CEDAW

⁶⁹ E.S and C.S v. United Republic of Tanzania (*Supra*)

Moreso, the CEDAW Committee promoted the adoption of laws in Rwanda forbidding sex-based discrimination in access to land; a law on gender equality in Mongolia; legislation outlawing all forms of violence against women in Burkina Faso and femicide in Panama; domestic violence laws in Turkey, Nepal, South Africa, and the Republic of Korea; a national investigation into missing and murdered indigenous women in Canada; and anti-trafficking laws in Ukraine and Moldova.⁷⁰

In addition, in response to the CEDAW Committee's concluding observations, Sri Lanka implemented gender-responsive budgeting for rural economic development projects and China took steps to reduce cases of non-medical foetal sex identification and sex-selective abortion as well as to alter stereotypes that lead to son preference.⁷¹ The Committee is still working to uphold the rights of women worldwide.

1.1.4. CONVENTION ON THE RIGHTS OF THE CHILD

As a result of the peculiarity of children in the world, the United Nations deemed it fit to establish a special treaty to deal solely with the rights of a child. The Convention on the Rights of a Child (CRC) was adopted in 1989 and it has become the most widely ratified human rights treaty in the world.⁷² This human rights treaty was necessitated due to the huge amounts of abuse suffered by children all over the world as well as their special needs. These said abuses include the lack of education, torture, child marriage, exploitation as child soldiers, etc.

The treaty went a long way in trying to ensure the protection of children from all forms of abuse. This is due to the fact that children are more vulnerable to abuse than older persons. In fact, children do not only encounter abuse from the hands of older persons, but they also encounter abuse from their peers in the guise of bullying at the centres of education.⁷³ The abuse in educational centers for children relates to this research due to the fact that it gives a potent example of abuses faced by persons, particularly children. The treaty provides that the member

⁷⁰ Bond, 'Intersectionality in Treaty Body Decisions', *Global Intersectionality and Contemporary Human Rights* (Oxford, 2021; online edn, Oxford Academic, 23 Sept. 2021), from <https://doi.org/10.1093/oso/9780198868835.003.0006>, accessed (23.04.2023).

⁷¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the combined 7th and 8th periodic reports of Colombia, 29 October 2013, CEDAW/C/COL/CO/7-8,

⁷² Convention on the Rights of a Child, UNICEF, <https://www.unicef.org/child-rights-convention> Accessed (7.01.2023)

⁷³ Lundy L, 'The Rights of Child Human Rights Defenders: Implementation Guide' *Child Human Rights Defenders*, Center for Children's Rights, Queens University, Belfast, 2020, <https://childrightsconnect.org/wp-content/uploads/2020/12/final-implementation-guide-the-rights-of-child-human-rights-defenders-forweb.pdf> Accessed (9.01.2023)

states shall protect children from all forms of physical or mental abuse, neglect, maltreatment or exploitation.⁷⁴ This particular provision ensures that the rights of the children are important, and the state party has no excuse to derogate from them.⁷⁵

Children who identify as one of the LGBTQ+ community face additional challenges in the areas of mental, physical abuse, maltreatment, neglect, and exploitation, hence, the protection offered by the child right act seem to be pivotal to their interests. The treaty also protects children from all forms of exploitation which includes sexual exploitation and abuse,⁷⁶ economic exploitation,⁷⁷ child trafficking.⁷⁸

The CRC also protects children from torture and cruel, inhuman and degrading treatments.⁷⁹ All forms of torture and cruel treatment of children are covered by this protection. For instance, female genital mutilation that is popular in some parts of sub-Saharan Africa can be captured under article 37 of the Convention on the Rights of the Child.

On the basis of equality, the wording of the CRC is abundantly clear, it provides in Article 2 that irrespective of the sex, gender, colour, religion or other status of the child, discrimination is not permitted. The purport of this provision is that equality of gender is guaranteed as a child cannot be denied any opportunity or advantage on the basis of their gender. It is important to note that the latter parts of the provisions of the treaty stipulates that a child cannot be discriminated against for their “other status.” This provision can be translated to cover the rights of children who identify as part of the LGBTQ+ community from any form of gender inequality and discrimination.

To further support children's rights, the CRC established the Committee on the Rights of the Child, a group of independent experts responsible for monitoring and evaluating the implementation of the treaty by State parties.⁸⁰ State parties are required to submit periodic reports on their progress, and the Committee provides recommendations to improve the protection and promotion of children's rights, as seen in the *M.C. v. Bulgaria* case.

⁷⁴ Article 19, Convention on the Rights of the Child

⁷⁵ UNCRC (2011) General Comment No. 13 on the Right of The Child to Freedom from All Forms of Violence, CRC/C/GC/13, para. 37 https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf. Accessed (9.01.2023)

⁷⁶ Article 34, CRC

⁷⁷ Article 32, CRC

⁷⁸ Article 35, CRC

⁷⁹ Article 37, CRC

⁸⁰ United Nations, ‘Committee on the Rights of the Child (CRC)’, Office of the High Commissioner for Human Rights.

In the landmark case of *M.C. v. Bulgaria*,⁸¹ a 14-year-old transgender boy experienced significant discrimination, harassment, and violence at school due to his gender identity. He and his family brought the case before the Committee on the Rights of the Child, claiming that Bulgaria had failed to adequately protect his rights under the CRC. The Committee found that Bulgaria had indeed violated several provisions of the CRC, including the right to non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival, and development (Article 6), and the right to protection from all forms of violence (Article 19).⁸²

The Committee on the Rights of the Child, in its concluding observations, recommended that Bulgaria take immediate and effective measures to prevent discrimination based on sexual orientation and gender identity in educational settings, provide support to transgender students, and train teachers and other school staff on how to create safe and inclusive learning environments.⁸³ This case demonstrates the Committee's commitment to addressing the unique challenges faced by LGBTQ+ children and their role in ensuring the protection and promotion of children's rights under the CRC.

1.1.5. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

While the ICCPR protects the first-generation rights, the ICESCR protects the second-generation rights. The provisions of the ICESCR are similar to the provisions of chapter 2 of the Nigerian Constitution⁸⁴ in the sense that there are no judicial remedies for the breach of the provision. The provisions in the said treaty are merely indicators to guide the state parties with respect to admissible conducts as it relates to the human rights of individuals.

The treaty provides for the right to equality of men and women,⁸⁵ to enjoy equal rights and opportunities with respect to economic, social and cultural rights. An incidence of gender equality can be traced to employment where in some circumstances, men and women are not subjected to the same treatment seeking for employment. Hence, the treaty seeks to ensure gender equality by giving equal opportunities to all genders in pursuing the right to be gainfully

⁸¹ CRC, Communication No. 4/2016, *M.C. v. Bulgaria*, United Nations.

⁸² *Ibid*

⁸³ Committee on the Rights of the Child, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Bulgaria' United Nations.

⁸⁴ The 1999 Constitution of the Federal Republic of Nigeria, 2011 (as amended.)

⁸⁵ Article 3, ICESCR

employed and make a living,⁸⁶ and while in the said employment, everyone should be entitled to equal wages for equal amounts of work done.⁸⁷

The right to education is one of the most cogent ambits of gender equality as females are not allowed to access education in some societies. Some societies prefer to culture a female in the arts of family life and womanhood rather than allow such female attend school. In response to this, the ICESCR provides that everyone should be given equal access to education.⁸⁸

It is important to note that the right to education of females is however problematic in some instances. For example, since the right to education is an economic and social right, it has been argued that the right to education is not justiciable, that is, the right to education is not enforceable in the court of law.⁸⁹ One of the reasons for the non-justiciability of the right to education under this treaty is the provision of Article 12 which provides thus.

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

The above provision is to the effect that state parties are not expected to apply all the provisions of the said article immediately upon the ratification of same, this is because, the process for the implementation of the rights embedded in the treaty is expected to be long and cumbersome, hence, the principle of progressive realization was embedded in the spirits of the treaty. Therefore, state parties to the treaty can be said to comply with the provisions of the treaty even in the event that there is no 100% enforcement of the rights in the said treaty. Hence, the enforcement of the right to equal education of females as against their male counterparts becomes problematic.

Another important point to note with respect to the non-justiciability of the right to education under the ICESCR is the fact that the constitutional provisions of the state party may provide for same. For instance, the right to equal education is provided for by Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria, 2011 as amended. The said chapter provides

⁸⁶ Article 6, ICESCR

⁸⁷ Article 7, ICESCR

⁸⁸ Article 13, ICESCR

⁸⁹ Peerenboom R. P., Human Rights and Rule of Law: What's the Relationship? 36 GEO. J. INT'L L. 809, 816 (2005)

for equal opportunities for education without discrimination amongst genders. However, Section 6 (6) (C) of the Nigerian constitution provides that the provisions of chapter 2 is non-justiciable due to the fact that they only represent the fundamental objectives of state policies which the government cannot be held accountable for. As a result of the fact that educational rights are rights which are economic and social in nature, as identified above, the said rights are only expressions of aspirations of the Nigerian government. Additionally, one cogent reason for the said non-justiciability is the flurry of unending litigation initiated against the government as a result of various violation of the rights to education by the citizens of the country- particularly the female gender. Hence, it is important to add that the realization of freedom from discrimination amongst females as against the male folk continues to be a major problem encountered by the implementation analysis of the International Covenant on Economic, Social, and Cultural Rights.

The Committee on Economic, Social, and Cultural Rights was established to monitor the implementation of the International Covenant on Economic, Social, and Cultural Rights and its Optional Protocol by state parties to the treaty.⁹⁰ All state parties to the Convention are obliged to submit reports to the Committee chronicling how economic, social, and cultural rights are being implemented in their states.⁹¹ The Committee is also empowered to entertain individual complaints from persons claiming a violation of the covenant rights.⁹² The Committee also publishes authoritative guidance on the provisions of the Covenant known as general comments, which is a means of generating jurisprudence and providing a method by which members of the Committee may come to an agreement by consensus regarding the interpretation of norms contained in the covenant.

In the exercise of the committee's mandate to entertain complaints, it has continued to receive and determine complaints. In 2017, the Committee received a complaint by Mohamed Ben Djazia and Naouel Bellili seeking an enforcement of their right to adequate housing under Article 11.1 of the Optional Protocol. The Committee, after receiving communications from the state party, Spain held that the eviction of the authors by State party authorities, including the regional authorities of Madrid, without a guarantee of alternative housing constituted a violation of their right to adequate housing in the absence of reasonable arguments from the State party in relation to all measures taken to the maximum of its available resources. This would be a

⁹⁰ ECOSOC Resolution 1985/17 of 28 May 1985

⁹¹ Article 16 and 17 of the ICESCR

⁹² UN General Assembly. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Resolution adopted by the General Assembly (2009).

violation of OP-ICESCR Article 11.1 (in conjunction with articles 2.1 and 10.1 of the same Covenant). The following suggestions were made by the Committee:

(a) Implement pertinent statutory and/or administrative measures to ensure that defendants in tenant eviction proceedings have the right to object or file an appeal so that the judge can weigh the repercussions of the eviction and the measure's consistency with the Covenant.

(b) Take the appropriate steps to address the issues that may result in an evicted person being left without adequate accommodation due to a lack of coordination between judicial rulings and social service actions.

c) Take the necessary steps to ensure that evictions affecting individuals who lack the resources to secure alternative housing are only carried out after there has been a genuine and effective consultation with these individuals and that the State party has taken all necessary steps, to the best of its ability, so that the evicted individuals have access to an alternative dwelling, especially in cases involving families, elderly individuals, children, and/or other vulnerable individuals.

d) Create and put into action, in collaboration with the autonomous communities and to the best of its ability, a comprehensive plan to ensure the low-income population's right to appropriate housing in accordance with General Observation No. 437. The resources, actions, timelines, and evaluation standards that will ostensibly and verifiably guarantee the right to housing for such individuals should be included in this plan.

From the decision of the committee above, it is obvious that they lack a coercive mechanism to ensure that states adhere to their decisions. Currently, there are many communications pending before the committee based on the same subject matter and between the same state party, Spain.

1.1.6. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT

Due to the prevalence of torture and other cruel, inhuman, and degrading treatments and punishment, this treaty was enacted in order to protect persons from such treatments. For instance, the killings by guillotine, torture chambers in Nazi Germany, trial by ordeal in traditional societies all attest to the cruelty of mankind. In more recent times, the horrors

perpetrated in Guantanamo Bay continues to haunt the human rights records of the United States of America.⁹³

This treaty is however relevant to this research because it contains some provisions which can be utilized to protect children from child abuse. This is because, cruel, inhuman, and degrading treatments are some forms of child abuse. By virtue of article 1 of the said treaty, torture was described as such acts that cause severe pain, physical or mental suffering to the victim. Hence, the author of this work is of the opinion that actions that cause children pain, both mentally and physically amounts to torture, cruel, inhuman, and degrading treatments. Child abuse in the form of sexual molestation as a result of child marriage falls under the protection of this treaty.

The Convention Against Torture has specific implications for LGBTQ+ children, who often face heightened risks of violence and abuse, especially in societies that stigmatize their identities. It provides a framework for advocating against discriminatory practices and pushing for legal reforms to protect LGBTQ+ children from all forms of cruel, inhuman, and degrading treatment and punishment.

The Committee Against Torture plays a critical role in monitoring and evaluating the implementation of the treaty by State parties.⁹⁴ By examining periodic reports submitted by State parties and conducting country visits, the Committee identifies areas of concern and provides recommendations to improve the protection of individuals, including LGBTQ+ children, from torture and ill-treatment.⁹⁵ By addressing the specific issues faced by LGBTQ+ children, the Committee's recommendations can help inform national policies and practices that contribute to a safer and more inclusive environment for these children.

One case that highlights the importance of implementing the Convention Against Torture to protect LGBTQ+ children is the 2014 report of Juan E. Méndez, the UN Special Rapporteur on Torture.⁹⁶ In his report, Méndez emphasizes the need for special attention to the unique vulnerabilities and challenges faced by LGBTQ+ children and calls for states to take necessary measures to prevent torture and ill-treatment of these children.

⁹³ Worthington, A. *The Guantanamo Files: The Stories of the 774 Detainees in America's Illegal Prison*. London: Pluto Press. 2007.

⁹⁴ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

⁹⁵ *Ibid*

⁹⁶ Méndez, J. E., *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Human Rights Council, 2013.

1.2 AFRICAN HUMAN RIGHTS TREATIES

1.2.1 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter on Human and People's Rights represents a major effort by the African region through the instrumentality of the Organization of African Unity (now African Union) to provide a unique human rights treaty for the African region which will encompass the true nature of the African region with respect to culture, tradition, norms and values.⁹⁷ It has been argued that the human rights discourse is greatly influenced by western liberalism which was forced on the African colonies during the early days of the draft of human rights treaties. Additionally, the Universal Declaration of human rights was drafted when virtually the entirety of the African continent was still under colonial rule. As a result of colonialism, Africans lacked representation at the table of the human rights treaties during the drafting sessions.⁹⁸ The non-participation of the African region in the said draft meant that their values and cultures were not taken into consideration while formulating the cardinal principles of human rights. For instance, American Indians were grossly violated, killed, ethnically cleansed and expelled from their ancestral lands, yet the United States was a major contributor to the first draft of the Universal Declaration of Human Rights; this in itself is a hypocritical expose on the true meanings of human rights. The disregard for human rights in the United States of America was further exemplified by the treatment of slaves as not being qualified to be called citizens.⁹⁹ While it has been argued that African took part in other human rights treaties such as the convention on the rights of the child, it was discovered that while the European delegates to the conference where these human rights treaties were being drafted were high ranking officials with the requisite expertise, knowledge and authority in the field of human rights, the African delegates were persons who were lower ranked officials with little or no experience in the field of human rights.¹⁰⁰

Due to the incomprehensive nature of the Universal Human Rights treaties, the African region found it imperative to create its own human rights treaties which would protect human rights based on their peculiar cultural practices and community belief. The African Charter on Human and People's Rights provides for gender equality and child abuse. This is because the protection

⁹⁷ Plagis, M. A. and Riemer L. From Context to Content of Human Rights: The Drafting History of the African Charter on Human and Peoples' Rights and the Enigma of Article 7. *Journal of the History of International Law* 23, no. 4 (2020): 556-589.

⁹⁸ Escobar, A. 'Beyond the Third World: Imperial Globality, Global Coloniality and Anti-Globalisation Social Movements'. *Third World Quarterly* 25, no. 1 (2004): 207-230.

⁹⁹ *Dred Scott v. Sanford* (1857) 19 How. 393, 15 L. ed. 691. 60.

¹⁰⁰ Perry M. J., 'Are Human Rights Universal? The Relativist Challenge and Related Matters' *Human Rights Quarterly* Vol. 19 No. 3, 1997, 461 at pp. 485.

of all gender is important to African values, although this is not to say it is not applicable in the United Nations Treaties, likewise the protection of children as children are seen as gifts from divinity.

Firstly, the treaty lays the foundation for all rights by declaring that everyone irrespective of their gender, sex, colour or other status are entitled to the protection of their rights without discrimination.¹⁰¹ Article 3 further provides that everyone is equal before the law while being entitled to equal protection. Article 13 provides that everyone is entitled to participate freely in the governance of their country. Hence, women should not be excluded from the political process in any African country as this provision runs contrary to any form of discrimination with respect to political participation. The treaty also seeks to protect the right of everyone to education, hence, females or other persons of other status cannot be excluded from accessing education.

An important feature of the African Charter is that it makes provisions for duties on the part of individuals as the treaty provides that everybody shall respect and not discriminate against their fellow beings (Article 28). This means that no individual is permitted to discriminate against another on the basis of sexuality. This enhances gender equality in a lot of ways. For instance, the act of refusing to rent out an apartment to a single unmarried lady is against this provision because of its unwholesome discriminatory ambience.¹⁰²

It is important to note that the provisions of the African Charter on Human and peoples' rights can be argued to protect the rights of the LGBTQ+ due to the protection of the rights of people of "other status" in Article 2 (although the ICCPR also provides for other status, the African Charter's creativity cannot be overemphasised). The African Charter on Human and Peoples' Rights therefore makes a case for its unmatched inclusiveness in the comity of human rights treaties.

The African Court on Human and Peoples' right is a judicial body created by the Protocol to the African Charter and obliged to adjudicate cases, provide advisory opinions, interpret the charter and promote human and peoples' rights. The Court plays an important role in protecting the charter rights. In the fulfilment of its mandate, the court has continued to provide advisory opinions, interpret the charter provisions and adjudicate on complaints submitted to it.

¹⁰¹ Article 2, African Charter on Human and Peoples' Right

¹⁰² Johnson, A., 'A Mega City Where Single Women Lie to Rent Flats,' BBC Worklife, 2021, <https://www.bbc.com/worklife/article/20210511-the-megacity-where-single-women-lie-to-rent-flats> accessed (20.03.2023).

1.2.2 MAPUTO PROTOCOL

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also known as the Maputo protocol was enacted due to the need to make a specific treaty to protect the rights of females in Africa. The said protocol was created in order to fill the gaps in the African Charter on Human and Peoples Rights as it relates to women. Since the issue of gender equality is on the forefront of this research, the author of this work will examine some of the relevant provisions.

Firstly, the treaty enjoins state parties to the treaty to make all efforts to eliminate all forms of discrimination against women through the use of legal, executive and legislative instruments.¹⁰³ The succeeding article further provides that women are entitled to the dignity of their person and harmful practices that degrade women which in turn exhibits gender inequality are not encouraged.¹⁰⁴ Due to the prevalence of female genital mutilation, trial by ordeal, unwholesome burial rights, the treaty provides that women must be protected from such practices.¹⁰⁵ Furthermore, the prohibition of female genital mutilation bothers on child abuse as female children will not be subjected to circumcision practices. Still on child abuse, the treaty fixes the age of the marriage of the child at 18 years,¹⁰⁶ because child marriage which invariably leads to child abuse has been abolished. With respect to the political process, women are stated to be eligible to participate equally as men in all political activities which includes voting and contesting for elections.¹⁰⁷ For instance, in Nigeria, the court has ruled that women must be given at least 35% affirmative action with respect to political appointments.¹⁰⁸

With respect to economic and social rights, women are granted the right to equal opportunities to get gainful employment.¹⁰⁹ The African charter took a step further by recognizing the rights of widows by providing that harmful practices in societies against widows such as inhuman and degrading treatments are prohibited.¹¹⁰ Additionally, women are given the right to inherit property,¹¹¹ and this is a major contribution to the field of gender equality due to the fact that most traditional African societies do not believe in the right of women to inherit property; in

¹⁰³ Article 2, Maputo Protocol

¹⁰⁴ Article 3, *Ibid*

¹⁰⁵ Article 5, *Ibid*

¹⁰⁶ Article 6, *Ibid*

¹⁰⁷ Article 9, *Ibid*

¹⁰⁸ Ameh Ebuka, 'Affirmative Action: Court Orders Nigerian Government to Reserve 35% of Public offices for Women,' Premium Times, April 2022, <https://www.premiumtimesng.com/news/headlines/522195-affirmative-action-court-orders-nigerian-govt-to-reserve-35-of-pu> accessed (20.03.2023)

¹⁰⁹ Article 13, *Ibid*

¹¹⁰ Article 20, *Ibid*

¹¹¹ Article 21, *Ibid*

fact, in some societies, women are considered as properties which are to be shared alongside their husbands property in the event of the demise of her spouse.¹¹²

1.2.3 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Charter on the Rights and Welfare of the child (ACRWC) is an important international treaty which seeks to protect the rights of children in Africa. The treaty was adopted in 1990 and entered into force in 1999. It is peculiar to African children due to the attention it paid to the cultural values and norms of the African society as they relate to children. The ACRWC has been ratified by a majority of African countries, demonstrating a commitment to improving the rights and welfare of children in the region.¹¹³

Article 2 of the treaty provides for the rights of children to be protected regardless of their gender, sex, color, religion or other status. The author of this thesis is of the opinion that this provision translates to the protection of the rights of children with respect to gender equality likewise, the protection of the rights of children that identify with the LGBTQ+ community due to the inclusion of the word “other status”.

Furthermore, Article 11 provides for the right of every child to access education. Hence, the harmful practice of not educating the girl child should be a thing of the past in Africa. As it relates to child abuse, the treaty prohibits child labor in any form.¹¹⁴ Importantly, Article 16 protects the child from child abuse and torture. Additionally, harmful cultural practices such as customs and practices which are harmful to the child, or which sexually exploits the child are prohibited.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is the body responsible for monitoring and evaluating the implementation of the Charter by State parties.¹¹⁵ The ACERWC reviews periodic reports submitted by State parties and provides recommendations to improve the protection and promotion of children's rights in Africa. The Committee also plays a role in raising awareness and advocating for children's rights at the regional level.

¹¹² Udoh, O. D., Folarin S. F., and Isumonah V. A. ‘The Influence of Religion and Culture on Women’s Rights to Property in Nigeria.’ *Cogent Arts & Humanities* 7, no. 1 (2020): 1750244.

¹¹³ African Child Policy Forum, ‘The African Report on Child Wellbeing 2020,’ ACPF, 2020.

¹¹⁴ Article 15, African Charter on the Rights and Welfare of the Child

¹¹⁵ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Mandate, ACERWC.

The ACRWC has implications for LGBTQ+ children in Africa, as they often face heightened risks of violence, abuse, and discrimination due to prevailing social and cultural norms.¹¹⁶ The Charter can be used to advocate for their rights and protection, by ensuring that they are not subjected to harmful practices or excluded from accessing essential services, such as education and healthcare. Organizations such as the African Child Policy Forum (ACPF) work to promote the rights of LGBTQ+ children in the region, through research, advocacy, and capacity-building initiatives.¹¹⁷

Despite the progress made in adopting the ACRWC, challenges remain in its implementation and enforcement. Factors such as limited resources, political instability, and deeply ingrained cultural and social norms can hinder the realization of children's rights in Africa.¹¹⁸ Additionally, the ACRWC lacks strong enforcement mechanisms, which can limit its effectiveness in holding governments accountable for their obligations under the treaty.¹¹⁹

By addressing these challenges and working to promote the rights of all children, including LGBTQ+ children, the African Charter on the Rights and Welfare of the Child can contribute to a more inclusive and equitable future for children in Africa.

CONCLUSION

In this chapter, the author of this work has been able to introduce the various United Nations Human Rights treaties that bother on child abuse and gender equality. It was identified during this research that some provisions of the diverse human rights treaties examined are similar in nature save for peculiar dissimilarities. For example, it was realized that both the African human rights treaties and the United Nations human rights treaties both protect the right of women in abundant ways such as equal rights to education, equal rights to employment, equal rights to economic opportunities, etc. Another similarity of both systems is that both systems possess complex implementation mechanisms which are meant to assist the treaty bodies to monitor the implementation of the treaties signed by the nation states. Furthermore, an important similarity in both human rights systems is the use of the phrase “other status” in order to capture unstated instances where the tentacles of the legal protection might be extended to- in effect, the author of this thesis argues vehemently that the “other status” phrase could be interpreted to protect

¹¹⁶ Human Rights Watch, ‘Africa: Discrimination Against LGBT People,’ HRW, September 2021.

¹¹⁷ African Child Policy Forum, *Our Work*, ACPF.

¹¹⁸ African Child Policy Forum, *The African Report on Child Wellbeing 2020*, ACPF, 2020.

¹¹⁹ *Ibid*

the rights of the LGBTQ+ community. The author of this work was also able to examine the African Human Rights treaties as they relate to gender equality and child abuse.

It was identified that the African human rights treaties possessed provisions that were peculiar to the African societies. For instance, the protection of the right of widows stands out amongst the peculiar rights of women as provided by the Maputo Protocol.

Also, it was identified during the course of this research that while the United Nations Human rights treaties were identified to contain mostly western liberalism, the African Human Rights treaties encapsulated the norms, traditions and cultures of the African region. Chief amongst this uniqueness is born in the provision for both rights and duties in the African Human Rights treaties.

2. UNDERSTANDING GENDER EQUALITY AND CHILD ABUSE

Gender equality and child abuse are two important issues under the International Human Rights discourse. While gender equality means the reality of ensuring that every gender enjoys equal opportunities without any form of discrimination, disadvantage or inequality foisted on any individual on the basis of gender. In this research gender shall include, female, male and persons who identify with the LGBTQ+ community. In some countries, gender equality has been identified as a major issue such that ministries of gender equality have been established in order to maintain gender parity in various areas of life such as access to education, access to healthcare, access to a reasonable standard of living, etc. There have been varying degrees of success in the operations of these ministries, however, challenges such as lack of government wherewithal or anti-social norms have been great clogs in the wheels of gender equality. In some instances, the male gender has protested about reverse discrimination, whereby males have been denied opportunities they merit due to the need to maintain the balance for gender equality.

This chapter will discuss the true meanings of gender equality while analysis the various instances where gender equality is evidenced. This chapter will also discuss the tools that have been utilized in achieving gender equality, for instance, the creation of the ministry of gender equality in various nations. This chapter will also attempt to discuss the challenges mitigating against the attainment of gender equality.

On the other hand, this chapter will discuss the incidences of child abuse as well as the various forms of child abuse. Additionally, the ways in which child abuse can be eradicated will be discussed. Finally, the author of this research will draw a nexus between child abuse and gender equality as the author of this work poses that child abuse is a direct symptom of gender inequality.

2.1 GENDER EQUALITY

Gender equality has been defined by various authors in the past and it is equally important to bring some of the definitions to bare as they will be important to this discourse. However, before delving into the definitions of gender equality, it is important to bring an understanding to the concept “gender”. Gender has been defined as a social construct of norms, behaviors and roles that varies amongst societies over time.¹²⁰ According to Laurel W, gender is categorized into

¹²⁰ Wamsley, L. ‘A Guide to Gender Identity Terms.’ National Public Radio (2021), retrieved from <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>, (19.04.2023)

male, female and non-binary. According to the World Health Organization, Gender is the characteristics of women, men, boys and girls that are societal constructs.¹²¹ It has also been argued by the World Health Organization that Gender is different from sex because sex deals with the biologically assigned makeover of an individual at birth.

To this end, there are various forms of identified gender; they include, male, female, gender neutral, non-binary, agender, pangender, genderqueer, two-spirit, third gender, and all, none, or a combination of all the aforementioned gender. A part of the crux of this research is to the effect that whatever a gender an individual may identify with, there ought to be gender equality such that one gender does not enjoy certain privileges another gender is “not entitled” to.

Examples of gender equality include equal access to health care. This aspect of gender equality is quite important due to the important and delicate nature of health care. By virtue of the Convention on the Elimination of Discrimination Against Women, women are entitled to equal access to healthcare including those relating to family planning.¹²² In several societies, women are not allowed to choose what happens to their body except an adult male sign off on their health care options. This is a prominent practice in Nigeria, especially for women who have to undergo caesarean section even in emergency situations thereby exposing them to health risk.

Another area where gender equality is prominent is area of employment. A lot of employment opportunities are more advantageous towards males, rather than females and other genders. In Nigeria for instance, married young married women are less likely to secure a job than their male counterparts even if they are better qualified. Hence, where employment opportunities are open to all gender, it is said that gender equality has been established.

2.1.1 TOOLS IN ACHIEVING GENDER EQUALITY

Since gender equality is an important fulcrum for the functionality of a progressive society, it is important to identify the tools that are relevant in the promotion of gender equality. According to the European institute on gender equality, gender analysis was identified as one of the tools to achieve gender equality.¹²³ Gender analysis is the process of acquiring gender related data in order to understand the disparities and distribution of gender with respect to representation,

¹²¹ World Health Organization ‘Gender and Health in Disasters. 2002.

¹²² Article 12, Convention on the Elimination of Discrimination Against Women

¹²³ European Institute for Gender Equality, ‘Gender Analysis,’ accessed (10.01.2023).

opportunities and advantages. Upon carrying out proper gender analysis, the government are able to block loopholes of inequality and restore gender equality and parity.¹²⁴

Another tool in ensuring gender equality is gender audit. Gender audit is majorly utilized to find out the ways in which disadvantaged genders in an organization are being treated. The purpose of this tool is to ensure that the various ways in which injustice is meted upon some genders in that organization are reduced to the barest minimum or altogether eradicated.¹²⁵

Gender awareness raising is another tool to realize gender equality. Lack of awareness is a significant barrier to achieving gender equality, as pointed out by UN treaty committees in their concluding observations on states. Many people in the world cannot differentiate between the various gender identities that exist, which leads to discrimination and unequal treatment. Therefore, gender awareness is an essential tool in ensuring gender equality is achieved.¹²⁶

Gender Budgeting has also been identified as a major tool in ensuring gender equality as the means, method and procedure of collecting and allocating resources can ensure that gender equality is achieved. When fiscal policies and financial administration is geared towards achieving gender equality, it is opined that gender equality can be achieved.¹²⁷

Another focal tool in ensuring gender equality is the gender impact assessment tool. This tool is utilized in the evaluation of the various laws, policies, and regulations as they affect every gender. Hence, periodic, and constant gender impact assessment of laws, regulations and legal frameworks will assist policy makers and law makers to ensure that gender inequality is eradicated if such exists in institutionalized forms.¹²⁸

Finally, another tool to ensure gender equality is the gender stakeholder consultation tool. This tool ensures that all genders are represented in decision making processes in order to ensure that the interests and rights of the different genders are adequately represented and catered for¹²⁹

¹²⁴ European Commission, Communication from the Commission to the Council and the European Parliament — Programme of Action for the Mainstreaming of Gender Equality in Community Development Co-operation, COM(2001) 295 final, 2001.

¹²⁵ InterAction, 'The Gender Audit Handbook: A Tool for Organisational Self-assessment and Transformation,' 2010, <http://www.rcrc-resilience-southeastasia.org/document/the-gender-audit-h>. accessed (8.01.2023)

¹²⁶ Sayers, R., Principles of Awareness-raising for Information Literacy, A Case Study, UNESCO, Bangkok, 2006.

¹²⁷ Stotsky, J., 'Gender Budgeting: Fiscal Context and Current Outcomes', International Monetary Fund working paper, (2016), WP/16/149, Washington DC, p. 12.

¹²⁸ European Commission, 'Evaluating Socio Economic Development, Sourcebook 2: Methods & Techniques. Gender impact assessment,' 2009.

¹²⁹ Wampler B. and McNulty, S., Does Participatory Governance Matter? Exploring the Nature and Impact of Participatory Reforms, Woodrow Wilson International Centre for Scholars, Washington DC, 2011.

2.1.2 CHALLENGES OF GENDER EQUALITY

There are various challenges that mitigate against the achievement of gender equality. Some of them will be identified in this sub-topic. First, unequal access to education is a major factor challenging the achievement of gender equality. Due to gender disparities, the male gender is more advantaged in access to education all over the world due to the patriarchal societal construct. Women and girls are raised to be docile and uneducated due to the fact that they are more likely to be fitted into home making roles in the future rather than the provision of an income for their family. Another challenge faced by gender equality is the fact that there is no equal access to employment opportunities. Very few countries in the world provide equal legal rights for men and women in obtaining employment, in fact, some countries outright ban women and girls from employments, most recent amongst them is Afghanistan currently under the Taliban regime.

Another challenge to gender equality is job segregation. Job segregation in this respect means the forced reality of designating certain jobs as that of a particular gender and not fit for another gender. For example, women take up about 16% of engineering roles in the United Kingdom in 2022.¹³⁰ Therefore, job segregation continues to shut the door at other genders with respect to access to specific jobs, this practice is a major factor that increases gender inequality in societies.

A major challenge of gender equality is lack of legal protection. The lack of gender protection continues to be a major risk factor that promotes gender equality all over the world. For instance, there are no clearly defined laws to protect gender diverse persons in many countries, in fact, there are legal frameworks that openly criminalize the existence of other genders besides the male and female gender which is generally accepted by the society. The same-sex marriage prohibition Act of Nigeria is an example of one of such laws and it has increasingly foisted discrimination against gender diverse persons in Nigeria.¹³¹ It is thus important to understand that the existence of favorable legal protection guarantees gender equality.

Another challenge to the achievement of gender equality is the lack of representation for genders in various spheres of life. For instance, the number of the female gender represented in parliaments are grossly low, talk less of the number of gender diverse persons who enjoy a total absence of representation in majority of countries.

¹³⁰ Useful Statistics, WES, <https://www.wes.org.uk/content/wesstatistics> Accessed (15.01.2023)

¹³¹ Ajayi-Lowo, E. O. 'The Same-Sex Marriage (Prohibition) Act in Nigeria. In *The Politics of Gender*' Leiden, The Netherlands: Brill. (2018). P. 34

2.2 CHILD ABUSE

The world health organization has defined child abuse as:

“Child maltreatment, sometimes referred to as child abuse and neglect, includes all forms of physical and emotional ill-treatment, sexual abuse, neglect, and exploitation that results in actual or potential harm to the child’s health, development, or dignity.¹³²

Child abuse is a universal phenomenon, and it has equally been defined as the act or failure to act of a person who is in charge of a child that leads to the death or damage in whatever guise to the child. Child abuse can occur in various forms and the said forms will be discoursed accordingly.

Firstly, there is the physical abuse. Physical abuse is the presence of physical injury which occasions substantial harm to the child. Physical abuse can occur in various ways and forms such as the beating, kicking, punching or slapping of a child. Physical abuse is one of the most prevalent forms of child abuse all around the world due to the commonality of the said practice. In Nigeria, for example, the physical abuse of two children by lovers made the headlines of all newspapers as a result of the unbelievable nature of the brutality and physical abuse meted upon little children.¹³³

Another form of child abuse is sexual abuse. Sexual abuse is the form of child abuse that involves the sexual exploitation of a child by an adult.¹³⁴ This form of sexual abuse is usually carried out by an adult for various reasons such as personal sexual satisfaction, monetary gains, psychological imbalance, etc. Rape is a major example of sexual abuse as there are a lot of children, both male and female who have been raped by an older folk. According to Claudia Laura, as of 2021, over 1700 Catholic priests and clergy worldwide have been accused of child sexual abuse, with the Catholic Church doing next to nothing to address this global pandemic of sexual abuse. This issue is not limited to Africa but is a worldwide problem.¹³⁵ On the other hand, child marriage in various jurisdictions of the world continues to be a major issue in the

¹³² World Health Organization, http://www.who.int/topics/child_abuse/en/ accessed (15.01.2023)

¹³³ The Nation Newspaper, ‘Police Arrests Lover for Brutalizing Woman's Two Children,’ accessed (17.01.2023).

¹³⁴ Medline Plus. U.S. National Library of Medicine ‘Child Sexual Abuse’ 2 April 2008. Archived from the original on 5 December 2013.

¹³⁵ Laura C., ‘Almost 1700 Priests and Clergy Accused of Sex Abuse are Unsupervised,’ NBC News, October 4, 2019, accessed (18.01.2023).

sexual exploitation children. According to UNICEF, one in every 5-girl child is married,¹³⁶ and more than 650 million women alive today have been married as children.¹³⁷ Also, at least 12 million children have been married before the age of 18.¹³⁸ Child marriage leads to child sexual exploitation which in turn exposes children to sexually transmitted diseases such as gonorrhoea and HIV/AIDS. In fact, it has been discovered that child marriages may cause cervical cancer amongst girls.¹³⁹

Another form of child abuse is neglect. The negligent treatment of children by their parents, guardians or minders is a major form of child abuse. Neglect has been defined as the abandonment of a child by the person who is meant to take care of the said child for the proper physical and emotional development of the said child.¹⁴⁰ A veritable symptom of child neglect is the failure to afford a child proper education. Hence, the failure to afford a child proper education, thereby exposing a child to idleness highlights child abuse.

Another form of child abuse is emotional abuse. Emotional abuse for a child can come in various ways which may include verbal mistreatment, threat of violence, false imprisonment etc. In various societies, emotional abuse is constantly practiced against children, and it ultimately leads to a troubled adulthood for such child.

Finally, another form of child abuse is child exploitation. Child exploitation can occur in various ways such as the exploitation of children to carry out trade on behalf of adults, the exploitation of children to carry out armed robbery operations. Prominent amongst the examples of child exploitation is the utilization of children in the army to prosecute armed conflicts. This is prominent in the middle east and Africa due to the proliferation of various militias that have been starved of manpower. The various armed conflicts in Liberia, Sierra Leone and Central African Republic are some examples of countries where child soldiers have been exploited.

¹³⁶ UNICEF, *Understanding the Relationship Between Child Marriage and Female Genital Mutilation: A Statistical Overview of Their Co-occurrence and Their Risk Factors*. UN, 2021.

¹³⁷ *Ibid*

¹³⁸ *Ibid*

¹³⁹ Nour N. M. 'Health Consequences of Child Marriage in Africa' *Emerging Infectious Diseases* 2006 Nov;12(11):1644-9. Doi: 10.3201/eid1211.060510. p. 1645

¹⁴⁰ Scott, D. 'Understanding Child Neglect (CFCA Paper No. 20).' *Child Family Community Australia*, Melbourne: Australian Institute of Family Studies (2014): p. 7.

2.2.1 ERADICATING CHILD ABUSE

Child abuse in all its forms should have no place in our societies due to the dastardly nature of its being. Hence, the author of this work suggests the various ways in which child abuse can be eradicated in our societies as follows.

Firstly, the presence of a responsive government to the plight of children cannot be over emphasized. The roles and capabilities of the government in ensuring that child abuse is eradicated is not meagre. For example, the government can establish child protection networks that will work tirelessly to identify abused children and bring them under a government program such as foster care, adoptions, etc. The number of children that are forced to endure various forms of abuse continue to increase due to the fact that the children do not have any other option than to stay with their abusers. The presence of government agencies that will take over the care of abused children will go a long way in ensuring that child abuse is totally eradicated or at least reduced to the barest minimum.

Secondly, the provision of enforcement mechanisms for the protection of children under the various legal frame works for the protection of the child is important in eradicating child abuse. For example, the Convention on the rights of the child and the African Charter on the Rights and the Welfare of the child continues to be flagrantly violated by various persons due to the fact that there are no proper enforcement mechanisms for the enforcement of the rights of children. For instance, the procedure to enforce the rights of a child at the African Court of Human Rights or submission of a complaint to African Committee of Experts on the Rights and Welfare of the Child is quite expensive and cumbersome, hence, the rights of the child as enunciated by the various human rights treaties are but wishful expressions due to the lack of enforcement mechanisms. It is thus suggested that the presence of adequate enforcement mechanisms for the rights of children will ensure that the rights of a child are adequately protected, and child abuse will be eradicated.

2.3 LGBTQIA

LGBTQIA often refers to people who identify as Lesbian, gay, bisexual, transgender, queer, and those who are questioning their gender identity or sexual orientation, intersex and asexual.¹⁴¹ LGBTQ gained recognition in the early 21st century with the enactment of the

¹⁴¹ UC Davis, LGBTQIA Resource Center <https://lgbtqia.ucdavis.edu/educated/glossary> accessed (19.04.2023)

Vermont law in 2000 recognising Same-sex Union and the first same-sex marriage in 2004.¹⁴² Some countries have passed legislations legalising same sex marriage or repealed legislations criminalising gay discrimination. However, there is no international human right instrument protecting LGBTQ rights, although some protection currently exists.

The developments in European region with regards to the recognition and protection of LGBTQ rights seems to be the most developed. The European Court of Human rights using the evolutive interpretation has continued to ensure the protection of LGBTQ rights. In the case of *L. and V. v. Austria*,¹⁴³ the applicants were convicted for having homosexual intercourse with young males, an act classified as a criminal offence for males but not females. The court found a violation of Article 14 in conjunction with Article 8 of the European Convention on Human Rights. The court opined that there is no sufficient justification for the difference in the treatment complained of.

Employing similar reasoning and interpretation may provide some form of protection for the rights of LGBTQ in the United Nations human rights system of protection, particularly under Article 17 of the International Covenant for Civil and Political Rights, the right to privacy. This would however be a problem under the African human right system as the African Charter on Human and Peoples' Right does not have an express provision for the right to privacy, even though some scholars have continued to argue that the right to privacy may be implied under the Charter.¹⁴⁴

It can be seen that although LGBTQ rights are gradually gaining recognition and protection, however their woes are worsening in Africa with the recent passage of the Ugandan Act. Respite is yet to be seen in the African front which is quite worrisome to this author.

It is true that people face various challenges in life such as inequality, torture, discrimination, violence or even abuse, but with people who identify as LGBTQ go through even worse. Some of the peculiar challenges faced by these community of people include discrimination, harassment, marginalization, and even outright violence. In Africa for instance, only about twenty-five countries allow same-sex marriage, while it is prohibited in other African countries. The most recent onslaught being the passing into the law of the Anti-Homosexuality Bill 2023

¹⁴² Morris B. J. 'A Brief History of Lesbian, Gay, Bisexual, and Transgender Social Movements', (2023) <https://www.apa.org/topics/lgbtq/history> accessed (19.04.2023)

¹⁴³ Application no. 39392/98 & 39829/98 2003 (European Court of Human Right). See also *S. L. v Austria* Application no. 45330/99 2003 European Court of Human Right.

¹⁴⁴ Singh A. and Power M. 'The Privacy Awakening: The Urgent need to Harmonise the Right to Privacy in Africa' (2019) 3 African Human Rights Yearbook 202-220, p. 211.

by the Ugandan Parliament, restricting freedom of speech on LGBT topics and criminalising homosexuality. Under the bill, gay sex is punishable by life imprisonment or death, while promotion is punishable with fine or imprisonment.¹⁴⁵

2.4 NEXUS BETWEEN CHILD ABUSE, GENDER EQUALITY AND LGBTQ

It is opined by the author of this thesis that child abuse and gender equality are connected in various ways. For instance, the absence of gender equality forces a girl child to get married at a very young age, which in turn leads to child abuse by way of sexual and emotional abuse. In various traditional societies, gender roles are assigned from birth, hence, the boy child is elevated as against the girl child. Hence, before a girl child turns 18, she would have been betrothed or given in marriage to another adult who in turn will start to abuse the child sexually.¹⁴⁶ The girl child who is sexually abused by her supposed husband is exposed to various diseases such as chronic pelvic pain, dyspareunia, vaginismus, and nonspecific vaginitis.¹⁴⁷ In Northern Nigeria for instance, vesicovaginal fistula is prevalent amongst the girl child which leads to serious health complications as a result of child marriage.

Additionally, there have been instances where a child exhibits symptoms of gender diversity such as transgender, etc. as a result of which the parents place such child in solitary confinement in order to eradicate ‘strange behaviours’ from such child. This in turn results in various forms of abuse such as physical abuse, emotional abuse, neglect, and torture. It is opined that in the situation where gender equality exists, such child would not be subjected to such forms of abuse. Furthermore, there is also incidents of microaggression and harassment of children who exhibit even mild traces of LGBTQ.¹⁴⁸

To this end, the author of this thesis opines that gender equality and child abuse share a very strong bond and the eradication of gender equality will go a long way in eradicating child abuse.

¹⁴⁵ Madowo L. and Nicholls C. ‘Uganda Parliament Passes Bill Criminalizing Identifying as LGBTQ, Imposes Death Penalty for Some Offences’, <https://edition.cnn.com/2023/03/21/africa/uganda-lgbtq-law-passes-intl/index.html> accessed (19.04.2023).

¹⁴⁶ Askari L. ‘The Convention on the Rights of the Child: The Necessity of Adding a Provision to Ban Child Marriages’ (1998-1999) 5 ILSA Journal of International and Comparative Law 124.

¹⁴⁷ Committee Opinion, ‘Adult Manifestation of Child Sexual Abuse’ American College of Obstetricians and Gynecologists, August, 2011 <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2011/08/adult-manifestations-of-childhood-sexual-abuse.pdf> Accessed (8.01.2023)

¹⁴⁸ McCabe P. C., Dragowski E. A. & Rubinson F. ‘What Is Homophobic Bias Anyway? Defining and Recognizing Microaggressions and Harassment of LGBTQ Youth’, *Journal of School Violence*, (2013) 12:1, 7-26, DOI: 10.1080/15388220.2012.731664

CONCLUSION

The thesis in this chapter has comprehensively examined the various facets of gender equality, including access to education, employment opportunities, and healthcare. Despite progress in these areas, numerous challenges persist in achieving true gender equality, such as job segregation, unequal access to resources, and inadequate legal protection for marginalized genders. To address these obstacles, the chapter proposes the implementation of robust tools and strategies, including gender analysis, gender audit, gender awareness raising, gender budgeting, and gender impact assessments. Furthermore, it emphasizes the importance of inclusive representation in decision-making processes to ensure the needs and perspectives of all genders are taken into account.

The second part of this thesis delves into the pervasive issue of child abuse, analyzing its various forms and exploring potential strategies for eradication. The chapter underscores the necessity of a collaborative approach involving international, regional, and national governments, as well as all concerned parties to effectively combat child abuse.

Lastly, the thesis establishes a critical nexus between gender equality, child abuse, and the experiences of LGBTQ+ individuals, particularly children. The chapter highlights the prevalence of harassment, microaggressions, and discrimination perpetrated by students, teachers, authorities, and caregivers, which exacerbate the vulnerability of these marginalized groups. To address these issues, the author advocates for efficient and effective protective measures, as well as fostering a culture of understanding and respect for diversity, to create a safer and more inclusive environment for all.

3. COMPARATIVE ANALYSIS OF THE UNITED NATIONS HUMAN RIGHTS SYSTEM AND THE AFRICAN HUMAN RIGHTS SYSTEM

The United Nations Human Rights System and the African Human Rights System as two distinct human rights system which have marked difference but still possesses some important similarities. For example, while the human rights treaties to have emanated from the United Nations system have been rights based, those from the African Human Rights System possessed both rights and responsibilities on the part of beneficiaries of rights.

Another marked difference between both systems is the attention paid to the enforcement of rights by the two systems. To this end, this chapter will analyze the significant responses of the United Nations Human Rights System to gender equality on one hand while also examining the United Nations response to child abuse.

Furthermore, this chapter will compare the responses of the African Human Rights System to gender equality and child abuse. By analyzing both issues, we can better understand the strengths and weaknesses of the system in addressing different forms of human rights violations and identify areas for improvement.

3.1. THE RESPONSE OF THE UNITED NATIONS HUMAN RIGHTS SYSTEM TO GENDER EQUALITY AND CHILD ABUSE

This subheading shall be divided into two parts, first, the gender equality ambit of this discourse will be examined while the later part will deal with the child abuse ambit.

By virtue of the various International Human Rights treaties under the auspices of the United Nations which have been discussed in the first chapter of this thesis, it is imperative to examine the enforcement of the said rights by the United Nations; this said enforcement of rights is a proper metric to analyze the response of the United Nations Human Rights system to gender equality and child abuse.

With respect to rights domiciled in the International Convention on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural rights was established by the United Nations to monitor the implementation of the rights domiciled in the ICESCR. A major function of the said committee is to receive reports from member states of the United Nations with respect to the progress of upholding and implementing the provisions of the ICESCR. The major function of this committee is to report back to the United Nations Economic and Social council with respect to the said implementation of the aforementioned rights. However, in the

event that the member state in question does not respond or cooperate with the Committee, the committee is saddled with the responsibility of obtaining reports from other sources in order to ascertain the status of the implantation of the rights. A major stride achieved by the United Nations with respect to its response to human rights violations is the enactment of the Optional Protocol to the ICESCR. The optional protocol provides that any individual whose rights has been violated and does not obtain a remedy in their home country can apply to the United Nations Committee on Economic, Social and Cultural Rights.¹⁴⁹ A major drawback of this protocol however is that only citizens of member states who have ratified the optional protocol can apply to the committee for redress, failure of which such application will not be considered at all.¹⁵⁰ Another flaw of this protocol was identified in article 3 due to the fact that it provides that all legal remedies in the home state of the victim must have been explored before the committee can consider such application. It is opined that the legal systems of the home state of the victim are often inaccessible to the victim due to varying reasons such as poverty, ignorance and violence. For example, in Zimbabwe, a study conducted in 2017 found that only 5% of rape cases led to a conviction, highlighting the failure of the Zimbabwean justice system to effectively address gender-based violence.¹⁵¹ Similarly, in South Africa, despite progressive legislation aimed at combating gender-based violence, the conviction rate for rape cases is estimated to be as low as 4%,¹⁵² These examples demonstrate the pressing need for effective implementation and enforcement of human rights covenants within the African region. This pattern of inaccessibility of the justice system continues to be a major clog in the wheels of justice for many people who have been victims of gender-based violence; therefore, the provision of article 3 of the optional protocol to the ICESCR is circumspect as majority of gender rights abuses are not qualified to be filed at the committee stage as a result of the lack of exhaustion of domestic options. While this requirement is necessary to balance states primary responsibility and sovereignty, it can be a challenge for victims who may not have access to effective domestic remedies for their human rights abuses.

Another mechanism of the United Nations as a response to gender-based violence is the Optional Protocol to the International Convention on Civil and Political Rights. The said optional protocol established the human rights committee, a body of independent experts who

¹⁴⁹ Article 3, Optional Protocol to the ICESCR

¹⁵⁰ Article 1, *Ibid*

¹⁵¹ Musah, M. & Murasiranwa, F. 'Rape, Justice and the Zimbabwean Woman' *Journal of African Law*, (2017). 61(1), p.137.

¹⁵² Kiguwa, P. & Mabizela, M. 'The Gains and Challenges of Implementing Gender-Based Violence Legislation in South Africa' In S. S. Hassim, & T. A. M. Muanda (Eds.), *Gendered Power and Qualitative Methods in African Studies*. Palgrave Macmillan, Cham. (2018). p. 130.

monitor the compliance with the rights domiciled in the ICCPR.¹⁵³ The committee receives reports from states who have ratified the ICCPR treaty and the committee is obliged to report back to the United Nations periodically. The committee is also empowered to receive written complaints from individuals who feel their rights have been violated as it is stipulated in the ICCPR.¹⁵⁴ A typical example is the Mauritian Women's case, where the Human Rights Committee adopted the view that the law requiring male spouses of Mauritian women to get a residence permit which was not the case prior to 1977 Immigration law made an adverse distinction on the grounds of sex on the right to be free from arbitrary and unlawful interference with family and was in breach of the ICCPR.¹⁵⁵ However, such complaints can only be received by the committee provided that the individual has exhausted all legal remedies in the local justice system.¹⁵⁶ This is in line with the principle of subsidiarity which means that the primary protection of human right lies with the state, and a supranational or international adjudicatory body, in this case the Human Rights Committee can only adjudicate on a matter only after the exhaustion of domestic remedy.¹⁵⁷ As it was identified earlier, the complexity of exhausting all legal remedies in the host country will continue to deny several persons who wish to press for their rights before the Human Rights Committee. Another downside is the enforcement of the decisions of these supranational or international adjudicatory bodies by the states, which is often not obeyed.

Another important United Nations Treaty mechanism is the Committee on the Elimination of Discrimination Against Women.¹⁵⁸ The committee was set up by the Convention for the Elimination of all forms of Discrimination Against Women¹⁵⁹ and its function is to monitor the implementation of the rights domiciled in the CEDAW by the signatories to the said treaty. The committee's modus operandi is similar to other United Nations treaty bodies which is the reception of reports from state parties with respect to the judicial, legislative and administrative steps taken to give effect to the provisions of CEDAW.¹⁶⁰ The committee on CEDAW has

¹⁵³ About the Human Rights Committee, <https://www.ohchr.org/en/treaty-bodies/ccpr> Accessed (9.01.2023)

¹⁵⁴ Article 2, Optional Protocol to the ICCPR

¹⁵⁵ Shirin Aumeeruddy-Cziffra and 19 other Mauritian Women v. Mauritius, Communication No.35/1978, U.N. Doc. CCPR/C/OP/1 at 67 (1984)

¹⁵⁶ *Ibid*

¹⁵⁷ Carter W. M. Jr., 'Rethinking Subsidiarity in International Human Rights Adjudication', 30 *Hamline Journal of Public Law & Policy* 319 (2008). Available at: https://scholarship.law.pitt.edu/fac_articles/69 accessed (17.04.2023).

¹⁵⁸ Byrnes, A. The Committee on the Elimination of Discrimination against Women. In Hellebrunn A. & Aasen H. (Eds.), *Women's Human Rights: CEDAW in International, Regional and National Law*, Studies on Human Rights Conventions, pp. 27-61. Cambridge: Cambridge University Press. (2013). doi:10.1017/CBO9781139540841.004

¹⁵⁹ Article 17, CEDAW

¹⁶⁰ Cartwright, S. 'The Committee on the Elimination of Discrimination against Women.' In *Women and International Human Rights Law*, edited by Kelly D. Askin and Doreen M. Koenig, Ardsley, NY: Transnational, 2000, 165-81.

continued to receive complaints and give its decisions based on its findings. In 2011, the committee handed down a decision against Belarus in the case where a female prisoner was kept in the prison custody with only male prison officers who threatened to strip her and observe her perform private activities. The Committee recommended that women prisoner should be supervised by women officers and reemphasized the respect for women prisoners' privacy and dignity, protection against sexual harassment and discrimination.¹⁶¹ It is important to note that the implementation of the rights domiciled in the CEDAW has continued to be cumbersome and unrealistic, hence, it has been suggested by some scholars that some tools could be introduced in order to enhance the implementation of the rights in the CEDAW. For instance, it was suggested that additional United Nations resolutions should be introduced to make the implementation of the rights domiciled in the CEDAW compulsory, hence, giving the implementation some sort of coercive legal backing; While there is already an Optional Protocol to the CEDAW that allows for individual communications,¹⁶² there have been calls for an additional protocol to establish a coercive implementation mechanism for the treaty, these efforts have not been successful to date.¹⁶³ Of all the suggestions made, it is important to note that United Nations resolutions are in themselves merely persuasive and not binding, hence, the suggestion of making treaties potent through resolutions look unfeasible. Additionally, the suggestion of another optional protocol is flawed because the optional protocols to the ICCPR and the ICESCR have all proved that optional protocols are not quick fixes to implementation of treaties.

On the aspect of child abuse, the Committee on the Rights of the Child was established by the United Nations in order to monitor the implementation of the Convention on the Rights of the Child and three additional protocols,¹⁶⁴ namely, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, the Optional Protocol on the sale of children, child prostitution, and child pornography,¹⁶⁵ and the Optional Protocol on a Communications Procedure.¹⁶⁶ It is important to note that the Convention on the Rights of the

¹⁶¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Communication No. 23/2009, Inga Abramova v. Belarus*, 27 September 2011, CEDAW/C/49/D/23/2009.

¹⁶² Optional Protocol to CEDAW *Ibid*

¹⁶³ United Nations Division for the Advancement of Women. Strengthening the United Nations role in promoting gender equality and the empowerment of women: report of the Secretary-General (2003). Retrieved from <https://digitallibrary.un.org/record/502425> (03.04.2023)

¹⁶⁴ The United Nations has established three additional protocols to the Convention on the Rights of the Child. See: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁶⁵ The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography is one of the three additional protocols to the Convention on the Rights of the Child. See: <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>

¹⁶⁶ The Optional Protocol on a Communications Procedure allows individuals or groups to submit complaints to the Committee if they believe their rights under the Convention or its Optional Protocols have been violated. See:

Child and the optional protocols all prohibit one form of child abuse or the other. Thus, the Committee on the Rights of the Child is saddled with the responsibility, amongst other things to monitor the implementation of the convention and the protocols as they relate to child abuse. In this regard, the Committee has continued to exercise its mandate by entertaining complaints from children whose rights had been violated under the Convention on the Rights of the Child and its optional Protocol. In March 2022, the Committee gave its decision in the case of *K. S. and M. S. v Switzerland*.¹⁶⁷ In this case, the applicant's parents who were originally from Chechnya, Russia had applied for asylum in Switzerland and same was refused. They were then kept in a centre for asylum applicants whose application had been refused. In the Seeben centre for asylum, the applicants did not have the opportunity to go to school neither did they receive any social assistance. They then filed a complaint at the State Secretariat for Migration, and it was refused. They appealed to the Federal Administrative Court, but their appeal was dismissed.

Upon dismissal of their appeal, K.S. one of the children submitted an application for asylum, but the same was rejected on the ground that the case had been examined together with that of his parent's application. The family was later sent back to Russia and M. S. and K.S. then filed a complaint before the Committee on the Rights of the Child, claiming a violation under articles 2, 3, 4, 6 (2), 8 (2), 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 36 and 37 of the Convention.

The Committee found that there was a violation of the Convention because State parties have an obligation not to remove a child to a country where there are reasonable grounds to believe that there are reasonable risk of irreparable harm to the child and noted that the assessment of the risk should be carried out in an age and gender-sensitive manner, while making the best interest of the child the primary consideration. The Committee also considered the fact that M.S., one of the applicants who needed a cochlear implant was not put into consideration by the Swiss authority before being sent back to Russia. The Committee found that the State Party had violated the applicants' rights under Article 24 read together with Article 3, 6(2) and 12 of the Convention. This decision amongst other decisions exemplifies that the Committee is up and doing in discharging its responsibility, however, there existing challenges mentioned earlier in this work still constitute a clog in the wheel of justice. It is also important to mention that the Convention on the Right of the Child is the most ratified Convention under the United Nations.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications>

¹⁶⁷ *K.S. and M.S. v. Switzerland*, No. 74/2019, UN Committee on the Rights of the Child (CRC), 10 February 2022, available at: <https://www.refworld.org/cases,CRC,629f667d4.html> accessed (17.04.2023)

The United Nations also took a step further by creating the committee on torture and the subcommittee on the prevention of torture and other cruel, inhuman and degrading treatments. For example, the convention against torture and other cruel, inhuman and degrading treatments as discussed in chapter 1 of this thesis all prohibit child abuse in the guise of inhuman, cruel and degrading systems. Hence, the essence of the aforementioned committee and subcommittee is to ensure the implementation of the rights of children against child abuse.

From the foregoing, it is however noted although the United Nations has continued to intensify efforts to ensure that gender equality and child abuse is tackled, however the fact that the United Nations does not possess a coercive mechanism to ensure that gender equality is ensured nor child abuse is eradicated in member states of the United Nations is still a huge source of concern.

3.2. THE RESPONSE OF THE AFRICAN HUMAN RIGHTS SYSTEM TO GENDER EQUALITY AND CHILD ABUSE

It has been noted earlier that the various human rights treaties of the African Union discussed in chapter one has remarkable difference from other treaties of the United Nations due to its peculiarity with African realities of customs, norms and cultural values.

In examining the African Human Rights response to gender equality and child abuse, it is important to note the various approach adopted by the African Union to ensure the implementation of its treaties.

The first treaty discussed on the African front in chapter 1 is the African Charter on Human and People's Rights. The African Commission on Human and Peoples' Rights was established by virtue of Article 30 of the African Charter on Human and Peoples' Rights. The commission is empowered to receive individual complaints from Africans who are aggrieved about their rights being trampled upon. The said rights include rights of gender discrimination and child abuse as it is relevant to this research. In the case of *Egyptian Initiative for Personal Rights and Interights v. Egypt*,¹⁶⁸ the Commission found that there was a violation of Article 2, 3, 18, and 16 (1) of the African Charter amongst others and awarded damages in the tune of EP 57, 000 in favour of each of the victims and then urged the state party, Egypt to investigate the alleged violation and ratify the Maputo Protocol. A brief fact of the case is that the Initiative for Personal Right and Interight had brought a communication on behalf of four women who were victims of

¹⁶⁸ ACHPR Communication No. 323/06 (2011) (African Commission on Human and Peoples' Rights)

assault by the police and other individuals during a demonstration in 2005 by the Egyptian Movement of Change with regards to the referendum seeking to amend the Egyptian Constitution to allow multi-candidate presidential election. The four women were physically assaulted, stripped off their clothes and verbally assaulted and called names such as ‘slut’ and ‘whore’. The women filed a complaint to the Office of the Public Prosecution for the assault, but the investigator refused to take the statement of eyewitnesses and the women were threatened to drop the charges.

It is however important to note that the commission upon examination of the complaints can only make recommendations and non-binding resolutions.¹⁶⁹ Hence, a victim of gender discrimination, gender disadvantage or child abuse may approach the commission, but it is almost certain that such person cannot be adequately compensated due to the lack of coercion by the Commission. Additionally, a problem of the commission is that individuals cannot easily access them due to the endemic poverty, illiteracy and ignorance which is a popular mainstay in Africa.

However, due to the non-coercive nature of the commission, the African Union created the African Court on Human and Peoples’ Rights through the additional protocol to the African Charter on Human and Peoples’ Rights. The core mandate of the court is to interpret and apply the African Charter and act as an enforcement mechanism for the rights in the Maputo Protocol. The role of the Court is complementary to that of the Commission. In the discharge of its mandate, the court has continued to entertain complaints brought before it for adjudication. In the case of *Association Pour Le Progrès Et La Défense Des Droits Des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali*,¹⁷⁰ the Malian government in 2011 amended its Family Code. The applicants who are human rights organizations argued that some provisions of the Family Code contravened the rights in various African human rights instruments, principal among which is the African Charter, the Maputo Protocol and the African Charter on the Rights and Welfare of the Child (ACRWC). Some of the offensive provisions dealt with minimum age of marriage which was pegged at 16 for girls and 18 for boys, the provision which did not require religious heads who officiate marriages to verify parties’ consent to the marriage and inheritance laws which enshrined religious and customary laws as the binding law in issues of inheritance (Islamic law

¹⁶⁹ Policy Briefing, ‘Human Rights Protection Mechanisms in Africa: Strong Potential, Weak Capacity’ European Parliament Policy Department, 2013 [https://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491487/EXPO-DROI_SP\(2013\)491487_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491487/EXPO-DROI_SP(2013)491487_EN.pdf) Accessed (20.01.2023)

¹⁷⁰ Application 046/2016 African Court on Human and Peoples’ Rights

required women to receive only half of the inheritance received by men). The court found violation on all the rights complained of and ordered the State to amend the law and to comply with its obligations under Article 25 of the African Charter relating to information, teaching, education and sensitisation of the populations.

Sadly, the court only possesses jurisdiction over 34 states which have ratified the additional protocol. The said 34 states are Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Guinea Bissau, Kenya, Libya, Lesotho, Mali, Malawi, Madagascar, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Republic of Congo, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, Uganda and Zambia.¹⁷¹ Hence, the court cannot exercise jurisdiction over states which have not ratified the protocol.

Therefore, persons who have been victims of gender discrimination, or any form of injustice based on gender, or child abuse cannot access the court if their country has not ratified the additional protocol. Another sad problem with respect to the said court is that individual criminal responsibility has not been granted to the court, hence, individuals cannot be criminally responsible for child abuse or gender-based violence. The reason for the failure of the African Union to bestow upon the court this said ability is the lack of government wherewithal from the member states.

With respect to the protocol to the African Charter on Human and Peoples Rights on the Rights and Welfare of Women, not all member states of the African Union have ratified the said treaty. Hence, there is no total protection for women in every member state of the African Union. In fact, the implementation mechanism of the said protocol seem rather very weak as victims are advised to send their complaints to the African Human Rights Commission. As a result of the incapacity of the African Human Rights Commission, it has been suggested that gender budgeting should be a way to promote the implementation of the Maputo Protocol.¹⁷² Despite the weak enforcement mechanism, state lawyers and human rights organisation has continued to find ways to ensure the protection of rights contained in the protocol by making reference to it even in their national courts where there is a violation. The national courts in my opinion have been the greatest advocate in the protection of protocol rights, as they always refer to this

¹⁷¹ Organization of African Unity (OAU), Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, 10 June 1998

¹⁷² Budoo, A. Gender Budgeting as a Means to Implement the Maputo Protocol's Obligations to Provide Budgetary Resources to Realise Women's Human Rights in Africa, *African Journal of Legal Studies*, (2016). 9(3), 199-219. doi: <https://doi.org/10.1163/17087384-12340008>

protocol in reaching their decisions once the right in question is associated with any of the protocol rights.¹⁷³ But of course there is still so much that can be done to strengthen the protection of gender equality. Other suggestions made may constitute a clear admission of the weakness of the African Human Rights system to adequately respond to the issues of gender equality.

In the case of child abuse, the African Committee of Experts on the Rights and Welfare of the child (African Children's Committee), established by Article 32 of the African Charter on the Rights and Welfare of the child and mandated to promote and protect the rights enshrined in the Charter.¹⁷⁴ The African children's committee has received 23 communications and made a decision in 7 and the others communications are either pending or declared inadmissible.¹⁷⁵ It is important to state that the African Children's Committee was established in 2001 and the paucity of communications entertained by the committee goes a long way to show that there is still a long way to go to achieve adequate protection of the rights of enshrined in the Charter. The wanton, violation of child right in African which is in most cases disguised in the form of culture and discipline deserves more attention than it is currently attracting and so this author is of the firm view that more needs to be done to ensure that the issue of child abuse is curbed, and child enjoy adequate protection of their rights.

Regional instruments in Africa have, however, contributed to the implementation mechanism of the African Human Rights treaties. For example, the establishment of the ECOWAS community Court of Justice remains a major route of implementation of rights in West Africa as individuals possess the locus to approach such courts for redress. In *Dorothy Chioma Njamanze and 3 others v Federal Republic of Nigeria*¹⁷⁶ 3 of the plaintiffs were abducted by officials of the Abuja Environmental Protection Board (AEPB) and Society Against Prostitution and Child Labour and detained in very deplorable and inhuman conditions. They were sexually and physically assaulted by the officials of AEPB. The 1st plaintiff being a female had approached the officers of AEPB to secure the release of her friends, but she was harassed, physically and sexually abused and threatened by the same officers of AEPB, officers of the Nigerian Police Force and Nigerian Military personnel. Her further attempts to file a petition at

¹⁷³ *CMN v. AWM* [2013] eKLR (High Court, Kenya) In reaching its decision in this case, the court referred to the UDHR, CEDAW and Article 7 of the Maputo Protocol.

¹⁷⁴ Article 42 of the African Charter on the Rights and Welfare of the Child.

¹⁷⁵ Communications, African Committee of Experts on the Rights and Welfare of the Child, <https://www.acerwc.africa/en/communications/table> accessed (8.04.2023)

¹⁷⁶ *EW/CCJ/APP/17/14* (ECOWAS Court of Justice)

the Police Station, Maitama was unsuccessful because according to the officers, ‘they looked like prostitutes.’

They then approached the ECOWAS Court seeking a declaration that the failure of the state to protect their rights under Articles 2, 3, 4, 5, 8 and 25 of the Maputo Protocol amounted to a violation. The Court found that the state party, Nigeria had violated the rights of the plaintiffs under the African Charter, Maputo Protocol, CEDAW and other international instruments.

A major factor affecting the response of the African Human Rights system to gender equality and child abuse is the lack of ratification of human rights treaties even after same has been signed by the countries. For instance, Section 12 of the 1999 constitution of the Federal Republic of Nigeria provides that no treaty between the Nigerian state will possess the force of law unless such treaty has been ratified and domesticated by the National Assembly. This sort of provision is equally present in most constitutions of African states; hence, the legislature of member states of the African Union is given the latitude to pick and choose the treaties that they find “comfortable.” For this reason, a lot of rights are trampled upon for lack of ratification and domestication.

CONCLUSION

In this chapter, the author of this research has been able to analyze the response of the United Nations Human Rights System and the African Union Human Rights System. A remarkable difference is the establishment of the African Court of Human Rights and the Ecowas Court of Justice in protecting the rights of individuals in Africa, a phenomenon absent in the United Nations system.

However, the rights of LGBTQ are similarly unprotected in both systems. The only form of protection which they may enjoy is on the national level, for states that have enacted laws decriminalising their activities. This however is not the case in most African countries. It is concluded that more work is required on the path of the United Nations and the African Union to forge a more coercive mechanism for the implementation of the rights associated to gender equality and child abuse.

CONCLUSION

As discussed above, gender equality means the availability of equal opportunities, responsibilities and opportunities to all genders. All genders in this context means, male, female, transgender and all gender diverse persons. Gender equality remains a focal human right issue in the sphere of human rights as the absence of gender equality often translates to some form of abuse physical, emotional or psychological for the victims of the lack of gender equality.

Chapter one dealt with the legal framework of gender equality and child abuse under the various United Nations Human Rights Treaties such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all Forms of Racial Discrimination Against Women and Convention on the Rights of the Child. Under the African human rights system, the African Charter on Human and Peoples' Rights, the Maputo Protocol, the African Charter on the Welfare and Rights of the Child were also examined. It was identified that there exist certain similarities such as the presence of monitoring or judicial bodies in both systems and there is also the special protection for the right of widows in both systems. The striking difference between the two systems is that the United Nations human rights system is modelled towards western liberalism, while the African human right system encapsulates norms, traditions and cultures peculiar to Africa. There is also the presence of rights and duties in the African human right system which is absent in the United Nations human rights system. There is unfortunately no distinct legal instrument that dealt with the protection of the rights of the LGBTQ despite the growing number of persons who identify with this group.

Also, chapter two dealt with the core of this research. It analyzed the concept of gender equality, the tools for achieving gender equality and the challenges faced by gender equality. The chapter also examined the concept of child abuse by analyzing the forms and examples of child abuse while also examining the ways in which child abuse can be eradicated. Importantly, the issue gender equality and child abuse are worsened when one also identifies as LGBTQ and so it becomes necessary to make adequate provision for the protection of their peculiar rights.

Chapter three of this research work provided an insight into the responses of the African and United Nations Human Rights System to the issues of gender equality and child abuse. It was noted that these human rights systems provide monitoring or judicial bodies such as Commission, Court and expert committee charged with the responsibility of promoting and

protecting the rights enshrined in these instruments. However, there exists some clog in the wheel, such as lack of ratification of the instruments by some states, poverty, illiteracy, the principle of subsidiarity, lack of coercive mechanism and outright disobedience of these decisions by state parties. Although there is in existence certain measure of protection for gender equality and child abuse, however, this thesis argues that the protection is not adequate and will in the next paragraph proffer some recommendation for improvement.

During the course of the work, it was established that international law is riddled with politics, hence, most of the intentions of the law makers have been thwarted in the process of interpretation and application. Additionally, it was identified that like most international laws, both the African Human Rights Treaties and the United Nations Human Rights treaties are but principles of positive morality as they attract no form of sanction or coercion. This was visible in the implementation mechanisms of all the said rights, particularly as they related to the issues of gender equality and child abuse.

It was also identified in the course of the research that the world still has a long way to go as it relates to gender equality and child abuse. Another important observation is the lack of precise treaty with respect to the rights of the LGBTQ+ community. This is because there are specific treaties that address the rights of women, the rights of children, the rights of the disabled, however, there exists no international human rights treaty with respect to persons of the LGBTQ+ community.

While the issues of gender equality and child abuse are less disturbing in Europe, some parts of Asia and Americas, the issues of gender equality and child abuse continue to be a major problem in Africa. Even though Africa possesses more potent implementation mechanism on paper, the less coercive mechanisms approach utilized by the United Nations has yielded more positive results outside Africa.

RECOMMENDATIONS

1. Due to the lack of a comprehensive treaty specifically addressing the rights of persons in the LGBTQ+ community, it is recommended that an international human rights treaty be established. This treaty should affirm and protect all aspects of the LGBTQ+ community's rights, including their right to non-discrimination, equal protection under the law, freedom of expression, assembly, and association, and the right to privacy. It

should also recognize and affirm the diversity of the LGBTQ+ community, acknowledging the intersectionality of their experiences, including but not limited to race, ethnicity, religion, disability, and socio-economic status. The treaty should provide for the protection of LGBTQ+ refugees and asylum seekers, who may face persecution and discrimination in their home countries. States that ratify the treaty should be required to adopt legislation and policies that promote and protect the rights of LGBTQ+ persons and to ensure that violations of these rights are appropriately investigated and prosecuted. Civil society organizations and representatives from the LGBTQ+ community should be involved in the development and implementation of the treaty to ensure that their voices are heard, and their perspectives are taken into account. Finally, the treaty should be reviewed and updated regularly to ensure that it remains responsive to the evolving needs and challenges faced by the LGBTQ+ community.

2. The lack of access to human rights courts and commissions in Africa is a major issue with respect to the implementation of international human rights treaties as they relate to the issues of gender equality and child abuse. Therefore, it is recommended that specialized courts for gender equality issues and child abuse be created in every member state of the United Nations and the African Union in order to foster quick, easy and fast dispensation of justice. The establishment of specialized courts should also consider the needs of other vulnerable groups such as refugees, persons with disabilities, and minorities. This should be accompanied by efforts to enhance public awareness and education on gender equality and child abuse, including measures to combat harmful cultural practices that perpetuate gender inequality and child abuse.

The specialized courts should be staffed with trained and competent judges and prosecutors who have expertise in handling gender equality and child abuse cases. They should also be adequately resourced to ensure the efficient and effective dispensation of justice. The establishment of specialized courts should be guided by international human rights standards and best practices. In addition to specialized courts, it is important to strengthen existing mechanisms for the protection of human rights, such as national human rights institutions, ombudspersons, and independent oversight bodies. These institutions should have the power to investigate complaints, hold state actors accountable for human rights violations, and make recommendations for redress.

Lastly, the specialized courts should be evaluated regularly to assess their effectiveness in promoting gender equality and protecting children's rights. This evaluation should be conducted in consultation with civil society organizations and other stakeholders, and the findings should be used to improve the functioning of the courts.

3. On the ambit of gender equality, the presence of dedicated governmental bodies, such as gender equality ministries or commissioners in some European countries, appears to produce positive results. Therefore, it is recommended that the United Nations and the African Union adopt a binding resolution requiring their member states to establish an appropriate governmental entity, such as a ministry or commissioner, focused on gender equality. To ensure that the dedicated governmental entities are effective, they should be adequately resourced and staffed with competent personnel, given a clear mandate and set of objectives that are aligned with international human rights standards and best practices, and work in collaboration with civil society organizations and other stakeholders to promote gender equality and advance women's rights.

To ensure accountability, the dedicated governmental entities should be required to report regularly on their activities and achievements in promoting gender equality. To ensure that gender equality is effectively promoted and achieved across all member states, the binding resolution should be accompanied by technical assistance and capacity-building measures.

Finally, the United Nations and the African Union should evaluate the implementation of the binding resolution on a regular basis and use the findings to improve the functioning of the dedicated governmental entities and promote gender equality more broadly.

4. With respect to child abuse, several nations of the world continue to fail to ratify the convention on the rights of the child. However, taking a cue from the Geneva Convention which have become customary international law, it is recommended that the convention on the rights of the child should be elevated to customary international law to ensure that the convention is made binding even without ratification. It is worth noting, however, that not every provision of a treaty can easily become customary international law. Provisions that are overly specific or detailed may not meet the criteria of general state practice and *opinio juris*. Regarding the Convention on the Rights of the Child, certain principles, such as prioritizing the best interests of the child or prohibiting inhuman treatment, may be more likely to attain customary status. In contrast, other provisions might remain as treaty obligations exclusive to ratifying states. Consequently, although it is theoretically feasible for some principles within the Convention on the Rights of the Child to achieve customary status, the process necessitates a thorough examination of state practice and *opinio juris*. It is vital to acknowledge that attaining the status of customary international law is neither automatic

nor simple, and a meticulous evaluation of the convention's provisions and their adoption by states is required.

5. It is recommended that all treaty bodies concerned with gender equality and discrimination establish compliance indicators. Compliance indicators are those mechanisms that will assist the treaty bodies to monitor the compliance with the various human rights laws that provide for gender equality and the protection from abuse. To ensure the effective implementation of compliance indicators, state parties should undertake the following measures:
 - a. Utilize existing legal frameworks: State parties should develop compliance indicators based on existing international human rights laws, taking into consideration relevant treaties, conventions, and case law. This will ensure that the indicators have a solid legal foundation and are in line with established international norms.
 - b. Align national legislation and policies: State parties should ensure that their domestic legislation and policies align with the international human rights laws promoting gender equality and non-discrimination. This will facilitate the implementation of compliance indicators and enhance the monitoring process.
 - c. Support transparency and accountability: State parties should promote transparency and accountability in the implementation of international human rights laws related to gender equality and non-discrimination. This includes submitting regular reports to treaty bodies, engaging with civil society organizations and NGOs, and ensuring that the compliance indicators are publicly available.

By adopting these measures, state parties will be better equipped to implement compliance indicators within their legal frameworks, ensuring that treaty bodies receive regular and accurate updates on state parties' adherence to international human rights laws concerning gender equality and non-discrimination.

6. It is recommended that the latitude given to states to make reservations with respect to human rights to make them non-justiciable should be eradicated. This will ensure that state parties are held accountable to their various promises to implement the provisions of the various treaties. Making the international human rights with respect to gender equality and the abuse non-justiciable represent a major risk factor with respect to the implementation of the international human rights provisions. State parties have been discovered to hide under the clog of non-justiciability to perpetrate untold hardship on disadvantaged genders.

7. The author of this thesis opines that all provisions of international human rights treaties must be subject to immediate implementation and not gradual implementation as codified in some international human rights treaties. The principle of progressive realization tends to foist complex hardship on the implementation of international human rights, perpetuating human rights violations and discrimination against vulnerable groups. To facilitate immediate implementation of human rights provisions, state parties must be provided with the necessary resources, technical assistance, and capacity-building measures. Immediate implementation should be guided by the principles of non-discrimination, equality, and human dignity, with special attention given to vulnerable groups. The principle of immediate implementation should be evaluated regularly to assess its effectiveness in promoting human rights and ensuring accountability. Therefore, the author recommends the adoption of immediate implementation of human rights provisions as a guiding principle for international human rights treaties, accompanied by effective monitoring and reporting mechanisms, to promote compliance with human rights obligations and protect the rights of all individuals, particularly vulnerable groups.

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