

HARMFUL CULTURAL PRACTICES AND WOMEN'S RIGHTS IN NIGERIA*

Abstract

Women's rights to life, freedom of expression and association, right to free movement, right to education, right to adequate health and right to dignity are frequently violated. These violations have far reaching effects on the physical, psychological and emotional well being of women and inadvertently affect their contribution to the development of the Nigerian Society. This paper took a look at some of the cultural practices that are harmful and how they impact on the rights of women in Nigeria. The Research methodology is doctrinal. The paper found that most of the human rights abuses suffered by women are rooted in these harmful cultural practices. It was also found that the patriarchal nature of the Nigerian society is at the root of these cultural practices. The work revealed the difficulty in stopping some of these cultural practices. As part of the recommendations, this paper calls for an end to these cultural practices by engaging all stakeholders especially the head of traditional institutions and all those who are involved in these practices. This could be achieved by public enlightenment and awareness, legislative intervention, and re-orientation of law enforcement agents. Specific recommendations for women education and empowerment were made as a panacea to challenging harmful cultural and religious practices including child marriage.

Keywords: Harmful Cultural Practices, Human Rights Violations, Patriarchy

1. Introduction

Cultural practices have continued to exacerbate discrimination experienced by women the world over and this is more compounded in countries where women's fundamental human rights are undermined by patriarchal tradition.¹ In Nigeria, the rights of women are rooted upon certain customs, traditions and religious beliefs which were passed from one generation to another.² Adherence to Customary laws reinforces practices that are unfavorable to women in such areas as marriage, inheritance and even freedom of movement. Cultural practices that violate women's rights takes various forms; from son preference to female genital mutilation, widowhood practices, and early/forced marriage. These cultural practices which violate women's rights are commonly referred to as Harmful Traditional Practices (HTPs). HTPs are those practices that are based on cultural values and beliefs, but which are harmful to a specific group within the culture typically women.³ The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for economic, social and cultural rights in its Chapter II in form of the Fundamental Objectives and Directive Principles of State Policy. The Constitution specifically provides that 'The State shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives provided in Chapter II'.⁴ The Constitution has provisions of principles of equality and non-discrimination, but despite these constitutional provisions, discriminatory customary laws still form part of Nigerian Law and are routinely upheld by the courts. Eweluka refers to it as 'tension between protected rights and preserved culture' which is largely unwritten.⁵

2. Forms of Harmful Cultural/Traditional Practices

Harmful Traditional Practices (HTPs) are particular forms of violence against women and girls which are defended on the basis of tradition, culture and Religion. HTPs are a form of discrimination; they violate the human rights of the affected individuals, particularly women and girls. HTPs are used to reinforce the lower status attributed to women in many societies, and are enforced as a way to keep women in subordinate roles. Some forms of harmful traditional practices to be considered by this paper are widowhood practices, female genital mutilation, son preference, and child marriage.

Widowhood Practices

The state of widowhood ought to evoke sympathy but the contrary seems to be the case with widows in Nigeria as they have had to put up with the challenges brought about by harmful cultural practices.⁶ Besides the normal grief and pain that Nigerian widows go through at the loss of their husbands, the culture of the ethnic group to which they belong also demands that they undergo certain rites and rituals. Despite the fact that there are

* By Uwadineke C. KALU, PhD, Professor of Law, Faculty of Law, Nnamdi Azikiwe University, Awka; and

* Ophelia UMUNNA, PhD Candidate, Faculty of Law, Faculty of Law, Nnamdi Azikiwe University, Awka

¹ E Durojaye, 'Women, But not Human: Widowhood Practices and Human Rights Violations in Nigeria' (2013) 27 (2) *International Journal of Law and Policy and the Family* 176–196 at 176. Available at <<https://academic.oup.com/lawfam>> accessed 2 May 2020.

² C. Arinze-Umobi & OVC Ikpeze, *Gender Rights Law in Nigeria*, (Folmech Printing and Publishing Co. Ltd, Anambra State, 2008) p. 65.

³ United Nations, 2008, 'Harmful Traditional practices affecting the health of women and children', Fact Sheet #23 Available at <<http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf>> accessed 30 May 2020.

⁴ See The Constitution of the Federal Republic of Nigeria (1999) (as amended), S. 21(a)

⁵ UU Eweluka, 'Post-Colonialism, Gender, Customary Injustices: Widows in African Societies' (2002) 24 (2) *Human Rights Quarterly*, 425-484 at 447 Available at <<https://jstor.org/stable/20069610>> accessed 2 May 2020.

⁶ E Durojaye, *supra* (n 1) at 177.

constitutional provisions that guarantee the rights of citizens against torture and dehumanisation, women who lose their husbands are treated in the most inhumane ways under the guise of culture. Widowhood practices come in different forms that demean and even endanger the life of a woman. It spans from forcing the woman to drink the water with which her husband's corpse is bathed to prove her innocence in the death of her husband; to the denial of freedom of movement; denial of right to custody of children and right to inherit her husband's property. According to Uche Eweluka, the experiences of Nigerian Widows fall into two broad categories: disinheritance and deprivation of property and the mandatory observation of prescribed burial rites.⁷ The practice of these widowhood practices persists despite the clear provisions of International and Regional Human Rights Treaties for the protection of the rights of women against discriminatory cultural practices.

A lot of writers have pointed out the dehumanizing and degrading aspects of widowhood rites. Austin Ezeji for posits that 'the practice of widowhood in Nigeria is one clear way the institutionalisation of male dominance over women is manifested'.⁸ The late Justice Chukwudifu Oputa described the funeral rites of clean-shaving the head of the widow and compulsorily subjecting her to wear black or white clothing as dehumanising.⁹ These Rites are always justified by recourse to the culture of a people and a widow is handicapped in challenging them. Eweluka writes that if a widow challenges the constitutionality of a burial ritual, such a widow will be perceived as rejecting long-standing customary rules and the society at large.¹⁰ In the south east region of Nigeria, marriage is not terminated by the death of a man as the widow is still culturally married to the family of her deceased husband. In most cases, a male relative of the deceased husband would appropriate her to himself as a sexual partner which is a pure case of sexual harassment which violates the constitutional guarantees of a woman's right to life and dignity.¹¹

Female Genital Mutilation/Cutting

Female Genital Mutilation (FGM) encompasses all procedures involving partial or total removal of external female genitalia, or other injury to the female genital organs for cultural, religious or other non-medical reasons.¹² More than 200 million girls and women alive today have been subjected to the practice according to data from 30 countries where population data exist,¹³ and it is estimated that 68 million girls will be cut between 2015 and 2030 in 25 countries where FGM is prevalent.¹⁴ FGM occurs commonly in developing countries where it is firmly anchored on culture and tradition.¹⁵ Nigeria is one of the countries where FGM is still practiced. Reasons adduced by different cultures as to why FGM is practiced include social, cultural, and aesthetic reasons. In most societies, FGM is considered an intrinsic part of a community's cultural heritage which must be preserved. Some other reasons are that FGM aims at ensuring premarital virginity and marital fidelity since it reduces a woman's libido and helps her resist extramarital sexual acts.¹⁶ Some cultures also consider FGM as a rite of passage and a girl's initiation into womanhood.¹⁷ Other cultural reasons include female honor and assurance of women's

⁷ UU Eweluka *supra* (n 5) at 433.

⁸ AO Ezeji for, 'Patriarchy, Marriage and the Right of Widows in Nigeria' (2011) 12 (1) *Unizik Journal of Arts and Humanities*, 139 – 157 at 144 Available at <<http://dx.doi.org/10.4314/Ujah.v12i1.9>> Accessed 21 May 2020.

⁹ C Oputa, 'Women and Children as disempowered Groups' in AU Kalu & Y Osinbajo (eds), *WOMEN AND CHILDREN UNDER THE LAW*, 1, 9 (1989)

¹⁰ UU Eweluka, *supra* (n 5) at 459.

¹¹ See the Indian Supreme Court Case of *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

¹² WHO, (1995), 'Female Genital Mutilation - Report of a WHO Technical Working Group'. WHO Document: WHO/FPH/WHO 96.10 Geneva: WHO

¹³ United Nations Children's Fund, 'Female Genital Mutilation/Cutting: A Global Concern, (UNICEF, New York, 2016) Available at <<https://www.unicef.org/>> accessed 30 September 2020.

¹⁴ United Nations Population Fund (UNFPA), 'Female Genital Mutilation (FGM) frequently asked questions – July 2020. Available at <www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions> accessed 28 September 2020.

¹⁵ PC Ibekwe et al, 'Female Genital Mutilation in Southeast Nigeria: A Survey on the current knowledge and practice' (2012) 4 (5) *Journal of Public Health and Epidemiology*, 117-122 at 117. Available at <<http://www.academicjournals.org/JPHE>> accessed 23 September 2020.

¹⁶ World Health Organisation (WHO), 'Female Genital Mutilation, (2016) Available at <<http://www.who.int/mediacentre/factsheets/fs241/en/>> accessed 30 September 2020.

¹⁷ End FGM European Network, 'What is FGM?' Available at <www.endfgm.eu/female-genital-mutilation/what-is-fgm> accessed 25 September 2020. See also UNFPA, 'Top 5 things you didn't know about female genital mutilation' (5 February 2019). Available at <www.unfpa.org/news/top-5-things-you-didnt-know-about-female-genital-mutilation> accessed 28 September 2020.

marriageability since it enhances sexual pleasure for men.¹⁸ It is also believed in some cultures that FGM is practiced to ensure virginity and curb promiscuity, or to protect female modesty and chastity.¹⁹

FGM is of no medical benefits to girls and women; rather, it often leads to long-term physical and psychological consequences. It has been argued that health providers are reluctant in addressing the issue of FGM because they feel they have no role in addressing cultural practices.²⁰ FGM results in physical consequences which some authors have referred to as disability. Chielozona Eze argues that the writings of some authors like Warsan Shires's poetry collection, *Teaching my Mother How to Give Birth* (2011) and Nnedi Okorafor's work on magical realism, *Who Fears Death* (2010) lend force to the idea that the body of a woman who has undergone genital mutilation is disabled.²¹ FGM also results in gynecological, obstetrical and psychological complications. Its immediate consequences include severe pain, bleeding, shock, difficulty in passing urine, infections, injury to nearby genital tissue and sometimes death. The long term consequences include cysts, prolonged and obstructed labour, as well as other complications in childbirth and increased risk of newborn deaths.

Son Preference

Despite efforts to promote gender, equality in all spheres of life, the male child is still preferred to the female child.²² Son preference is due to a complex interplay of economic and socio-cultural factors and perpetuates discrimination which is a clear violation of women's rights. Culture is the main reason for sex preference in Nigeria. According to Ezebunwa E Nwokocha, 'male-child preference has remained one of the most lasting cultural values among the Igbo of South Eastern Nigeria'.²³ The significance attached to male roles and responsibility transcends social, economic and educational status because even amongst the educated population in Nigeria and irrespective of the level of education, people still hold onto whatever is considered the culture or tradition in matters affecting gender.²⁴ The issue of son preference is tied to Inheritance, since in most cultures in Nigeria; male children inherit their father's property.²⁵ Nigeria is a patriarchal society and patriarchy supports and sustains son preference in the cultures where it is practiced. Ine Nnadi posits that son preference is stronger in countries where patriarchy is firmly rooted,²⁶ the reason being that in a patriarchal system, men are presumed to have greater economic and social value than women. In a typical patriarchal society like Nigeria, women have no voice in decision making in their communities, even in matters that directly affect them. In Nigeria therefore, mothers are under intense pressure to give birth to sons in order to consolidate their marriages. Sex preference exposes women to a prolonged period of child bearing which has significant health implications on the mother.²⁷ A woman would go to any length, even at the risk of her life to have a male child so that she would have a voice in matters concerning her family. Son preference is the reason for the '*Nrachi*' ceremony practiced in some parts of Igbo land. This is a ceremony by which a girl whose father did not have a male child is forced to, or chooses to remain in her father's house and produce a male child that will inherit their father's property and ensure the continuity of the family name and lineage. Justice Fabiyi JCA in the case of *Mojekwu v Ejikeme*²⁸ condemned the *nrachi* ceremony when he states that '...The custom is perfidious and the petrifying odour smells to high heavens'.

¹⁸ A Ali, 'Knowledge and attitudes of female genital mutilation among midwives in Eastern Sudan' (2012) 9 (1) *Reproductive Health*, 23 cited in BD Williams-Breault, 'Eradicating Female Mutilation/Cutting: Human Rights-Based Approaches of Legislation, Education, and Community Empowerment' (2018) 20 (2) *Health and Human Rights Journal* Available at <<https://hrjournal.org/2018/08/eradicating-female-genital-mutilation-cutting-human-rights-based-approaches-of-legislation-education-and-community-empowerment/>> accessed 30 September 2020.

¹⁹ TC Okeke et al, 'An Overview of Female Genital Mutilation in Nigeria' (2012) 2 (1) *Ann Med Health Sci Res*, 70-73.

²⁰ UNICEF, 'Female Genital Mutilation/cutting: a Statistical overview and exploration of the dynamics of change'. (New York, 2013) Available at <<http://data.unicef.org/resources/female-genital-mutilation-cutting-a-statistical-overview-and-exploration-of-the-dynamics-of-change>> accessed 30 September 2020

²¹ N Okoroafor and W Shire in C Eze, 'The Body in Pain and the Politics of Culture' In: *Ethics and Human Rights in Anglophone African Women's Literature, Comparative Feminist Studies*, (Palgrave Macmillan, Cham, 2016) Available at <https://doi.org/10.1007/978-3-319-40922-1_4> accessed 30 September 2020.

²² DA Adekanle et al, 'Predictors of request for antenatal sex determination among pregnant women in Oshogbo, Nigeria' (2007) 16 (4) *Nigerian Journal of Medicine: Journal of the National Association of Resident Doctors of Nigeria*, 322-325 cited in A Olaogun et al, 'Preference for the male child and desired family size in Nigeria' (2009) 3 (4) *African Journal of Midwifery and Women's Health*, 193-197 at 193. Available at <<https://www.magonlineibrary.com>> accessed 21 October 2020.

²³ EE Nwokocha, 'Male-child syndrome and the Agony of Motherhood among the Igbo of Nigeria' (2007) 33 (1) *International Journal of Sociology of the Family*, 217-234 at 219. Available at <<https://www.jstor.org>> accessed 21 October 2020.

²⁴ ANT Eguavoen et al, 'The Status of Women, sex preference, decision making and fertility control in Ekpoma Community' (2007) 15 (1) *Journal of Social Sciences*, 42-49. Available at <<https://www.semanticscholar.org>> accessed 23 October 2020.

²⁵ I Nnadi 'Son Preference – A Violation of Women's Human Rights: A Case Study of Igbo Custom in Nigeria' (2013) 6 (1) *Journal of Politics and Law*, 134-141 Available at <<http://pdfs.semanticschorg/>> accessed 4 April 2020 at 136.

²⁶ *Ibid* at 137.

²⁷ MA Ushie et al, 'Implications of Sex Preference for Population Growth and Maternal Health in Obudu and Obanliku, Cross River State' (2013) 4 (3) *Academic Research International*, Available at <www.journals.savap.org.pk> accessed 4 March 2020.

²⁸ (2000) 5 NWLR 402.

Ngwuta JSC also condemned the preference of sons to daughters in *Anekwe v Nweke*²⁹ where he stated that ‘the craze for male children for which a woman could be denied her rights to her deceased husband or father’s property is not justified by practical realities of today’s world’.

Child Marriage

Nigeria has the highest number of child brides in West Africa and the third highest number in the world.³⁰ According to a 2017 report by UNICEF, 43% of Nigerian girls are married off before their 18th birthday, while 17% are married before they turn 15.³¹ Child marriage is more prevalent among the predominantly Muslim Hausa-Fulani tribe in the Northern part of Nigeria.³² The reason is that in Islam, there are strong religious taboos concerning female sexuality that mandate early marriage as a means of maintaining the purity of a girl.³³ Harmful Traditional Practices and gender discrimination are part of the drivers of child marriage.³⁴ For the purposes of this paper, a child means a person below 18 years and therefore, any marriage that has any of the parties below 18 years of age is considered to be child marriage. Marriage is one of civil society’s most important and fundamental institutions; however, it should properly be an institution for adults only.³⁵ Most child marriages are arranged by the girls’ parents without the knowledge of the girls involved, and therefore consent, which is an important ingredient in marriage, is dispensed with. Early marriage robs a girl of her childhood innocence and turns her into an “adult” prematurely.³⁶ It ends a girl’s childhood and forces her into adulthood and motherhood before she is physically and mentally mature.³⁷

Child marriage is rooted in gender inequality, which is both a cause and consequence of child marriage. When a child is given away in marriage because she is less valued in the family, gender inequality is a cause and when the child drops out of school due to early marriage, it turns out to be a consequence of the marriage.³⁸ MT Ladan described child marriage as one of the most serious harmful traditional practices affecting girls.³⁹ Child marriage has devastating physical, health and social consequences for the girl child. It has negative impacts on her health, educational attainment and empowerment.⁴⁰ A child given away in marriage will have her education truncated and the likelihood of earning her own living is reduced to the barest minimum if not totally eliminated. Child marriage is just a form of sexual exploitation and forced labour when the veil of wedding is lifted.⁴¹ Child brides are mere sex slaves to their husbands and domestic servants to their husbands’ families. Child marriage causes terrible harm to the girls including risks to their health from premature sexual intercourse and child bearing, the loss of their freedom and the curtailment of their self-development.⁴² A child going through the rigours of pregnancy and child-bearing when she is physiologically immature is exposed to life threatening illnesses such as Vesico-Vaginal Fistula (VVF) and Rectum Vaginal Fistula (RVF). Child marriage exposes children to various

²⁹ (2014) All FWLR (pt 739) 1154-1184.

³⁰ UNFPA & UNICEF, ‘Child Marriage in West and Central Africa: At a Glance’, September 2018. Available at <www.unicef.org> accessed 28 October 2020.

³¹ UNICEF, ‘Ending Child Marriage, Progress and Prospects (2017) UNICEF Child Marriage Report; See also Girls not Brides, ‘Child Marriage around the World: Nigeria’, 2014 Available at <<http://girlsnotbrides.org/child-marriage/nigeria/>> accessed 27 October 2020.

³² TS Braimah, ‘Child Marriage in Northern Nigeria Section 61 of Part 1 of the 1999 Constitution and the Protection of Children against Child Marriage’ (2014) 14 *African Human Rights Law Journal*, 474-488 Available at <<http://www.papers.ssrn.com>> accessed 27 October 2020.

³³ E Warner, ‘Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls’ (2004) 12 (2) *American University Journal of Gender, Social Policy and the Law*, 233-271. Available at <<http://www.digitalcommons.wcl.american.edu/jgspL/vol12/iss2/1>> accessed 26 October 2020.

³⁴ CO Nwonwu and I Oyakhromen, ‘Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions’ (2014) 29 *Journal of Law Policy and Globalization*, 120-126 at 120 Available at <www.iiste.org> accessed 28 October 2020.

³⁵ E Warner, ‘Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls’ (2004) 12 (2) *American University Journal of Gender, Social Policy and the Law*, 233-271 at 271. Available at <<http://www.digitalcommons.wcl.american.edu/jgspL/vol12/iss2/1>> accessed 26 October 2020.

³⁶ I Nnadi, ‘Early Marriage: A Gender Based Violence and a Violation of Women’s Human Rights in Nigeria’ (2014) 7 (3) *Journal of Politics and Law*, at 36. Available at <www.ccsnet.org/jpl> accessed 26 October 2020.

³⁷ MJ Robles, ‘Child Marriage and the Failure of International Law: A Comparison of American, Indian and Canadian Domestic Policies’ (2018) 18 (1) *International and Comparative Law Review*, 105-125 at 115. Available at <www.content.sciendo.com> accessed 26 October 2020.

³⁸ Internal Humanist and Ethical Union (IHEU), ‘Child Marriage: A Violation of Human Rights’, Available at <<http://iheu.org/child-marriage-violation-human-rights/>> accessed 20 October 2020.

³⁹ MT Ladan, ‘Global Perspective of Equality Rights of the Vulnerable Groups’, A paper presented at the Jurisprudence of Equality Programme (JEP) workshop for Judges, National Judicial Institute, Abuja, Nigeria on 24 – 28 May 2010, cited by Ine Nnadi *supra* (n 122) at 37.

⁴⁰ JJ Edmeades *et al*, ‘Economic impacts of child marriage: A Review of the Literature’ (2015) 13 (2) *The Review of Faith and International Affairs*, 64-73 Available at <<https://www.tanfonline.com/loirfia20>> accessed 5 November 2020.

⁴¹ E Warner, *Supra* (n 35) at 266

⁴² E Warner, *Supra* (n 35).

forms of violence including rape and battery.⁴³ Unfortunately, the girl child does not have adequate legal protection against early marriage. The multitude of definitions of a child by various laws makes protection of the girl-child against child marriage difficult, if not impossible. The Child Rights Act (CRA) (2003), which defines a child as any person below 18 years, prohibits child marriage⁴⁴ and child betrothal⁴⁵ and criminalises the practice.⁴⁶ However, Braimah⁴⁷ opines that the CRA is too weak to check the tide of child marriage in Nigeria. Since the CRA is not enforceable across all Nigerian States and has to be passed into law in each State of the federation to have the bite of law; it leaves children in states that have not domesticated the CRA vulnerable. As at 22 November 2022, five out of the 36 States of Nigeria are yet to domesticate the Child Rights Act.

The Constitution of the Federal Republic of Nigeria, which is the supreme law of the land,⁴⁸ should have come to the aid of children that have no protection in States that have no Child Rights Law, but unfortunately, there are provisions of the Constitution that seem to support and legalise child marriage. By the provisions of the Constitution, once a girl is married in Nigeria, she is regarded as an adult regardless of the age of the girl at marriage.⁴⁹ Furthermore, Section 61 of Part 1 of the Second Schedule of the 1999 Constitution, which provides that the Federal Government cannot interfere with the Islamic and Customary marriages, weakens and fails to give effect the Child Rights Act to protect girls against child marriage. For Braimah, the right of the girl-child is not adequately protected due to this section of the Constitution.⁵⁰ Enyinna S Nwauche aligns with Braimah and argues that the section supports the legality of religious child marriages in Nigeria.⁵¹

3. Gender-Based Violence as a Form of Harmful Cultural Practice

Gender-based violence otherwise known as Violence against Women (VAW) ranges from diverse acts of discrimination to physical violence. Across the globe, women are beaten, raped, maimed, mutilated and killed with impunity.⁵² VAW is officially defined by the United Nations as ‘any act of gender-based violence that results in, or likely to result in, physical, sexual, or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.’⁵³ From the above definition, violence against women includes all forms of harmful traditional practices already discussed in sub-section 2 of this paper. This sub-section will therefore deal solely with physical and sexual violence and other forms of domestic violence including economic and psychological violence. The most common violence experienced by women and girls in Nigeria is domestic violence which includes battering, intimate partner violence (IPV) like marital rape, sexual violence, and threats. One in every five women faces some form of violence during her lifetime.⁵⁴ Women are abused by men in their lives including their fathers, brothers, husbands, partners or total strangers. It does not matter the age or social status of a woman, she is not shielded from violence. The poor, the rich, the educated, the illiterate, the royalty,⁵⁵ have all been victims of gender-based violence.

Though violence against women obtains the world over, Nigeria’s case seems to be exacerbated by our cultures and the patriarchal nature of our society.⁵⁶ Scholars have argued that violence against women is an expression of

⁴³ In May 2020, in the North Eastern part of Nigeria, a 17 year old bride, Salma Hassan allegedly stabbed her husband to death because he was beating her and wanted to rape her.

⁴⁴ The Child Rights Act (CRA) (2003) Section 21.

⁴⁵ *Ibid* Section 22.

⁴⁶ *Ibid*, Section 23.

⁴⁷ TS Braimah, *supra* (n 32).

⁴⁸ The Constitution of the Federal Republic of Nigeria (1999) as amended, Section 1 (1).

⁴⁹ The Constitution of the Federal Republic of Nigeria (1999) as amended, Section 29 (4) (b). See also A Onuora-Oguno, ‘Constitutionalising the Violation of the Right of the Girl Child in Nigeria: Exploring Constitutional Safeguards and Pitfalls’ (2013) 5 *Oxford Human Rights Hub* Available at <<http://www.ohrh.law.ox.ac.uk/>> accessed 9 November 2020.

⁵⁰ TS Braimah, *supra* (n 32) at 474.

⁵¹ ES Nwauche, ‘Child Marriage in Nigeria: (Il)legal and (Un)constitutional?’ (2015) 15 (2) *African Human Rights Journal*, 421-432 <<https://researchgate.net/publication/295248818>> accessed 7 November 2020.

⁵² World Health Organisation (WHO), ‘Violence against Women’, 29 November 2017 Available at <www.who.int/> accessed 12 October 2020.

⁵³ United Nations General Assembly, ‘Declaration on the Elimination of Violence against Women’, Proceedings of the 85th Plenary Meeting, Geneva, 20 December, 1993.

⁵⁴ E Abama and CMA Kwaja, ‘Violence Against Women In Nigeria: How the Millennium Development Goals addresses the Challenge’ (2009) 3 (3) *The Journal of Pan African Studies*, 23-34 Available at ... accessed 7 October 2020.

⁵⁵ The brutal and merciless attack by the Deji of Akure, Oluwadare Adepoju Adesina (now deposed), on his second wife in May 2010 which led to her eventual death in 2011, is still very fresh in the minds of many Nigerians. The Deji was so ruthless that after beating the wife to a pulp, he poured chemical substance on her and still ordered his guards to whip her even while her skin was peeling off.

⁵⁶ RO Arisi and P Oromareghake, ‘Cultural Violence and the Nigerian Woman’ (2011) 5 (4) Serial No 21 *African Research Review (An International Multidisciplinary Journal, Ethiopia)*, 369-381. Available at African Journals Online <<https://www.ajol.info/index.php/afrev/article/view/69290>> accessed 8 October 2020.

patriarchal domination of women by men, rooted in gender and power inequality.⁵⁷ Cultural practices, norms and beliefs relegate women to second class status. In a typical Nigerian culture, a woman is born and raised in the belief that their identity is subsumed under that of the man.⁵⁸ There is a deep cultural belief that it is socially acceptable for a man to hit his wife in a bid to discipline her.⁵⁹ In the words of Oyediran and Isiugo-Abanihe, 'violence against a wife is seen as a tool that her husband uses to chastise his wife and improve her.'⁶⁰ These permissive Nigerian social norms of husband's right to beat his wife appeared to significantly increase the odds of spousal violence.⁶¹ Marriage in Nigeria, especially marriage under customary law, culturally means a complete loss of rights by a woman because 'it is common for a husband to believe that by paying the bride price, he now owns his wife'.⁶² At marriage, a woman surrenders her rights to her body as well as her agency.⁶³ Nwankwo stated that the culture in Nigeria is patriarchal and this culture 'fosters belief in men's entitlement to the service, obedience, loyalty, and subservience of women and authorizes men's violence towards women in the service of those entitlements'.⁶⁴ The unfortunate thing about wife beating in Nigeria is that, in addition to being culturally acceptable, it is also backed by law in the Northern part of the country.⁶⁵

Sexual violence especially rape cases have become endemic in Nigeria. According to Ojigbo, the country director of Amnesty International, 'No matter where you are in Nigeria ... every woman is at risk of rape. Nowhere is safe or immune to this violent crime against women.'⁶⁶ No day goes by without a report of one sexual abuse or another on a woman or a girl. Between the months of January and May 2020, the Nigerian police recorded 717 rapes cases,⁶⁷ and we know that the figure is much more because sexual violence is usually engulfed in silence due largely to the stigmatisation and victimisation of rape victims, and the fact that patriarchy justifies rape cases in Nigeria. The Nigerian culture makes it unusual for women to speak up in public and so, many female victims of violence suffer and die in silence. In agreement with this position, Ine Nnadi opined that 'women bear the brunt of a lot of violence in our society and silently cover them up so as to avoid stigmatisation or to protect their families'.⁶⁸ It is seen as a taboo to involve the police in domestic violence which is usually referred to as family matters.⁶⁹ Even when some women summon up the courage to report cases of domestic violence, the police do not respond if they consider the case to be within cultural norms especially in the rural areas.⁷⁰ The increasing incidence of rape against women and girls speak to underlying social norms that make it acceptable for men to feel entitled to women's bodies without their consent.⁷¹ Chimamanda Ngozi Adichie, at a United Nations virtual forum on sexual and gender-based violence on Wednesday, 10 June 2020, blamed the stigmatisation of rape victims on cultural bias against the female and stated that 'we live in a culture that diminishes women, where a

⁵⁷ J Lawson, 'Sociological Theories of Intimate Partner Violence' (2012) 22 (5) *Journal of Human Behaviour in the Social Environment*, 572-590. Available at <<http://www.tandfonline.com/doi/abs/10.1080/10911359.2011.598748>> accessed 10 October 2020.

⁵⁸ *Ibid.*

⁵⁹ TG Adegoke & D Oladeji, 'Community Norms and Cultural attitudes and beliefs factors influencing violence against women of reproductive age in Nigeria' (2008) 20 (2) *European Journal of Scientific Research*, 265-273 Available at <<https://www.researchgate.net>> accessed 10 October 2020.

⁶⁰ KA Oyediran & U Isiugo-Abanihe, 'Perceptions of Nigerian women on domestic violence: evidence from 2003 Nigeria Demographic and Health Survey' (2005) 9 (2) *African Journal of Reproductive Health*, 38-53 Available at <<https://www.ncbi.nlm.nih.gov>> accessed 10 October 2020.

⁶¹ N Linos *et al*, 'Influence of Community Social Norms on Spousal Violence: A Population-Based Multilevel Study of Nigerian Women' (2013) 103 (1) *American Journal of Public Health*, 148-155 Available at <<https://www.ncbi.nlm.gov/pmc/articles/pmc3518349/>> accessed 10 October 2020.

⁶² PO Ogunjuyigbe *et al*, 'Violence Against Women: An Examination of Men's Attitudes and Perceptions About Wife Beating and Contraceptive Use' (2005) 40 (3) *Journal of Asian and African Studies* 219-229 Available at <<https://www.researchgate.net>> accessed 10 October 2020.

⁶³ RO Arisi and P Oromareghake, *Supra* (no 56).

⁶⁴ Oby Nwankwo, 'Effectiveness of Legislation Enacted to Address VAW in Nigeria', An Expert Paper presented on 28 April, 2015 Available at <www.un.org> accessed 13 October 2020.

⁶⁵ The Penal Code, Section 55 (1) (d).

⁶⁶ 'Student raped and killed in church wanted to become a minister and "preach the word of God", says sister. A report by Bukola Adebayo of CNN, June 5, 2020 <www.edition.cnn.com> accessed 12 October 2020.

⁶⁷ 'Nigeria Records 717 Rape Cases in Five Months – Official' Premium Times, Abuja. 15 June 2020. Available at <www.alafrika.com> accessed 12 October 2020.

⁶⁸ I Nnadi, 'An Insight into Violence against Women as Human Rights Violation in Nigeria: A Critique' (2012) 5 (3) *Journal of Politics and Law*, 48-56 at 48 Available at <<https://www.pdf.semanticscholar.org>> accessed 7 October 2020.

⁶⁹ AL Ilika *et al*, 'Intimate partner violence among women of childbearing age in a primary health centre in Nigeria' (2002) 6 (3) *African Journal of Reproductive Health*, 53-58 Available at <<https://www.ncbi.nlm.nih.gov>> accessed 12 October 2020

⁷⁰ Bureau of Democracy Human Rights and Labour, '2009 Country Reports on Human Rights Practices' March 11, 2010 Available at <<https://www.state.gov/j/drl/rls/hrrpt/2009/af/135970.htm>> accessed 12 October 2020.

⁷¹ OXFAM Press Statement, '#Say enough to violence against women and girls in Nigeria', Available at <<https://www.nigeria.oxfam.org/latest/stories/press-statement-say-enough-violence-against-women-and-girls-nigeria>> accessed 7 October 2020.

woman does not have the right to wear what she likes and where what a woman wears could be used to justify her being raped'.⁷²

There is a presumption that marriage entails automatic consent to sexual relations of which the terms are dictated by the husband so husbands rape their wives at will. Spousal rape is equally not a crime in Nigeria by virtue of the definition of rape as 'unlawful carnal knowledge which takes place otherwise than between husband and wife'.⁷³ A typical Nigerian man believes that his wife is his property and he should deal with it as he likes. In the case of *Onwuchekwa v Onwuchekwa*⁷⁴ women were referred to as properties of men. Violence against women has dire physical, health and psychological consequences on the victims. Any form of violence against women is a form of disempowerment and eventually impoverishes families. 'Violence thwarts women's empowerment by limiting their ability to exercise agency and make choices'.⁷⁵ It is only when women are fully protected from violence that they will be able to enjoy the same autonomy, freedom, and opportunities as the men.⁷⁶

4. Harmful Cultural Practices as Violations of Women's Rights

Chinwe Abara opines that culture has a pervasive influence on how women are treated in Nigeria and that all discriminations against women tend to seek justification in cultural mores, beliefs and practices.⁷⁷ Moreover it is often difficult for people to challenge beliefs and practices which are deeply rooted in their own cultures and because of this, international, regional and national measures to protect girls and women against Harmful cultural practices are not enough. There is often no legal framework at national level to address HTPs or where it exists, enforcement is inadequate. Widowhood practices perpetuate gender inequality. Durojaye, citing Sossou and Nyanzi et al, posits that widowhood practices are not only tools to perpetuate gender inequality but are also barbaric, atrocious, unethical and a gross violation of women's fundamental rights and freedom.⁷⁸ Widowhood rites, burial, and mourning rituals inflict loss of personal dignity, loss of health and sometimes loss of life on the widows. The fact that widowhood practices are meted only on women who lose their husbands and never applied to men who lose their wives, violates the provisions of Article 1 of the Universal Declaration of Human Rights⁷⁹ which states that 'all human beings are born free and equal in dignity and in rights'⁸⁰ Article 20(a) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003⁸¹ provides that 'State parties shall take appropriate legal measures to ensure that widows are not subjected to inhuman, humiliating or degrading treatment'. The human dignity which is at the core of all human rights treaties is violated by these widowhood practices. The 1999 Nigerian Constitution (as amended) provides for the right to dignity of human person.⁸²

Female Genital Mutilation (FGM), which is deeply rooted in cultural beliefs, is widely recognised as a violation of human rights.⁸³ FGM reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. FGM interferes with the natural functions of girls' and women's bodies and violates their rights to non-discrimination,⁸⁴ their rights against mental and physical violence and maltreatment,⁸⁵ their rights to highest attainable standard of health,⁸⁶ and their rights to freedom from torture or other cruel, inhuman and degrading treatment or punishment.⁸⁷ FGM is also performed without the consent of the children which breaches their right to freely express their views.⁸⁸ The rights of girls as provided in various other

⁷² The event was tagged "Combating and preventing sexual and gender-based violence in humanitarian crises".

⁷³ The Criminal Code, Section 357. Marital rape was criminalized in the US in 1975 and in the UK as recent as 1991.

⁷⁴ [1991] 5 NWLR (pt 194) 739

⁷⁵ A Sakhonchik *et al*, 'Closing the Gap: Improving Laws Protecting Women from Violence' Women, Business and the Law; World Bank, Washington DC, April 2015. Available at <<https://www.openknowledge.worldbank.org/handle/10986/28416>> accessed 13 October 2020.

⁷⁶ *Ibid*.

⁷⁷ JC Abara, 'Inequality and Discrimination in Nigeria: Tradition and Religion as Negative factors affecting Gender', A paper presented at the Federation of International Human Rights Museums, 8-10th October 2012, p 4. Abara was at the time a Deputy Director/Head, Lagos Zonal Office, National Council for Arts and Culture (Federal Ministry of Culture and Tourism, Nigeria)

⁷⁸ E Durojaye, *supra* (n 1).

⁷⁹ General Assembly Resolution 217A.

⁸⁰ See also Articles 2(1) and 26 of ICCPR and Article 2(1) of ICESCR on the rights of equality and non-discrimination. See also Article 3 of both the ICCPR and the ICESCR.

⁸¹ This Protocol, otherwise known as the Maputo Protocol was ratified by Nigeria on 18 February 2005

⁸² See Section 34(1)

⁸³ TC Okeke et al, 'An Overview of Female Genital Mutilation in Nigeria' (2012) 2 (1) *Ann Med Health Sci Res*, 70-73.

⁸⁴ The Convention on the Rights of the Child, Article 2.

⁸⁵ *Ibid*, Art. 19 (1).

⁸⁶ *Ibid*, Art. 24 (1).

⁸⁷ *Ibid*, Art. 37.

⁸⁸ *Ibid*, Art. 12.

international and regional treaties and conventions are violated by the practice of FGM.⁸⁹ The 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) calls on State parties to abolish customs and practices which constitute discrimination against women,⁹⁰ and 'modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes'.⁹¹ FGM violates these CEDAW provisions and also violates the rights of women as enshrined in the Nigerian Constitution.⁹²

Son preference is fraught with human rights abuses of women and the girl child. Son preference goes to the core of gender discrimination where a particular gender is adjudged superior to the other and it offends major legal regimes touching on discrimination.⁹³ It inflicts on the psychology of girls; a perpetual internalisation of the inferior status and low premium accorded them by society, and may affect their behaviour and mannerisms in the larger society.⁹⁴ It also violates their rights under the convention on the rights of the child.⁹⁵ The desire to have a male child results in prolonged child bearing and impacts negatively on the health of the woman and violating her right to reproductive health and adequate health care. Son preference violates the right to the dignity of human person and freedom from discrimination which offends the provisions of Constitution of the Federal Republic of Nigeria.⁹⁶ The girl child is the first to be asked to drop out of school where parents are not financially capable of shouldering the responsibility of having all their children in school. This is a clear violation of the right of the child to education as provided in the Convention on the Rights of the Child.⁹⁷ Various other rights of the child are violated by this tenacious holding unto the cultural practice of son preference.⁹⁸

Child marriage is a violation of the human rights of the girl child. It violates the rights of children by denying them access to education, good health and freedom.⁹⁹ A girl's right to freely choose a spouse and to enter into marriage by free and full consent as provided for in most human rights instruments is violated. Child marriage exposes children to various forms of violence including rape and battery. Child marriage undermines nearly every Millennium Development Goal as it is an obstacle to eradicating poverty, achieving universal primary education, promoting gender equality, improving maternal and child health and reducing HIV and AIDS.¹⁰⁰

Authors have argued that violence against women is the most pervasive human rights violation. Nnadi refers to it as one of the most ubiquitous violations of women's human rights.¹⁰¹ She went further to say that 'gender-based violence not only violates human rights, but also hampers productivity, reduces human capital and undermines economic growth.'¹⁰²

5. Conclusion and Recommendations

This paper revealed that despite several treaties that have been adopted, signed and ratified by Nigeria for the protection of women's rights, women are still subjected to varying degrees of discrimination on the grounds of culture. Our findings are consistent with the view that cultural norms are forces that bear overwhelming influence on human rights of women, and that violations of women's human rights are particularly complex when these are embedded in culture. The study also found that there is dearth of adequate laws to protect women in Nigeria from being subjected to harmful cultural practices and where the laws exist, they are not adequately implemented. It is difficult to enforce laws that people feel intrude upon their cultural heritage. Furthermore, asserting one's rights over those of intimates does not come easily to many. Only a few women would be willing to challenge patriarchal laws and attitudes especially for women whose entire lives are shaped by their familial relationships. This study also found that culture is used to justify abuse and human rights violations of women. The work further revealed that the abuses done to women in the name of family and culture have been hidden by the sanctity of the so-called private sphere, and perpetrators of such human rights violations have enjoyed immunity from accountability for their actions. Customary Inheritance Laws deny females any form of inheritance. Early marriage of the girl child

⁸⁹ See the UDHR, Article 2 on right to non-discrimination, Article 3 on right to security of person, Article 5 on freedom from cruel, inhuman and degrading treatment, Article 12 on right to privacy and Article 25 on right to enjoy good health. See also Article 12 of both the IICPR and ICESCR on the right to attainable standard of physical and mental health.

⁹⁰ CEDAW, Art. 2 (f).

⁹¹ CEDAW, Art. 5. Art. 24(3) of the CRC also requires States to take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children.

⁹² The Constitution of the Federal Republic of Nigeria (1999) (as amended), Chapters 2 and 4. S. 31.

⁹³ See Articles 1, 2, and 5 of CEDAW and Section 42 of the Constitution of the Federal Republic of Nigeria.

⁹⁴ I Nnadi *supra* (n 25) at 136.

⁹⁵ See Articles 2, 6, 12, 19, 24, 27, and 28 of the Convention on the Rights of the Child.

⁹⁶ The Constitution of the Federal Republic of Nigeria, Section 42.

⁹⁷ Convention on the Rights of the Child, Article 28.

⁹⁸ Convention on the Right of the Child, Article 2, Article 6, Article 19, and Article 27.

⁹⁹ CO Nwonwu and I Oyakhiromen, *supra* (n 34) at 125

¹⁰⁰ *Ibidat* 124

¹⁰¹ I Nnadi *supra* (no 36) at p 48

¹⁰² *Ibid* at p. 53

is still a menace especially in the North despite the fact that it results in the violation of basic and fundamental rights of the child including rights to education, health, dignity and economic empowerment. Most widows in Nigeria are denied their social and economic rights due to the practice of harmful widowhood rights and obnoxious customary inheritance laws. Sexual violence and other forms of violence are exacerbated by the system of patriarchy which legitimises the use of physical violence by men to assert dominance in a relationship and 'correct' behavior of wives and partners. Violence against women constitutes a highly damaging dimension of the dehumanization of women on basis of culture.

In view of the findings, it is evident that the enjoyment of the human rights of women and the girl child in Nigeria is adversely affected by culture. The following recommendations are hereby proffered:

- a. There should be civic education and public awareness on the dangerous and harmful effects of some of these cultural practices as this will go a long way to effecting attitudinal change towards the status of women in Nigeria.
- b. Alternative viable rituals should be proposed to replace these harmful traditional practices.
- c. There should also be an elaborate and systematic sensitisation of the female gender on their rights to enable women identify when these rights are being violated and the steps to take to challenge these harmful practices.
- d. There should be a National Legislation on Domestic Violence which should criminalise HTPs.
- e. CEDAW and the African Union Protocol on the Rights of Women in Africa should be domesticated in accordance with section 12 of the CFRN.
- f. Education of women in Nigeria should be taken seriously because when women are empowered through education; they will have the courage to challenge their social position in their communities and may say no to 'harmful practices'.
- g. Empowerment programs for women should be put in place. When women are empowered, they would be more productive and less dependent on the men and able to stand their grounds where their rights are being violated.
- h. Law enforcement agents, especially the first responders to cases of domestic violence, should be given adequate training and re-orientation on how to handle such cases.
- i. It is also recommended that separate units be established in all police stations to handle cases of violence against women especially rape cases where utmost confidentiality would be maintained.