Nigerian Courts and Human Rights Jurisprudence: Promoting Non-discrimination in the Context of Women's Rights

Oti Anukpe Ovrawah*

* LL.B. (1983), B.L. (1984), M.I.L.D. (1987), Director, National Human Rights Commission. Nigeria.

Abstract

This paper explores the role of the Nigerian judiciary in upholding international human rights laws and principles in their adjudicatory functions concerning protection of the rights of women. In Nigeria, women make up about 49% of the population.[1]In 2019, the estimated population of Nigeria is over 200.96 million, ranking 7th in the world.[2] The Office of the High Commissioner on Human Rights states that "*Despite various efforts and concerns shown by local and international human rights groups, women who account for almost half of the entire population, generally lagged behind in all aspects of life (economically, socially, politically and intellectually)*".[3] Human rights of women, as a vulnerable group, have been captured in several regional and international conventions, and Nigeria is a party to several treaties that protect these rights. This paper reflects on how the Nigerian judiciary has, through various judicial pronouncements received, responded and interacted with international human rights law and principles in the context of promoting and protecting women's rights and developing robust jurisprudence thereto. Ten (10) Nigerian superior court judgments on protection of women from discrimination are considered, on whether they confront barriers that promote discrimination and inequality, and how the courts could strengthen their judgments with international human rights treaties as done through the Indian Supreme Courts best practice cases on judicial activism.

Key Words: Nigeria, Courts, Judgments, Women, Customs, Discrimination, Human Rights, Activism, Jurisprudence.

1 Dr. Foluke O. Dada,*TheJusticeability and Enforceability of Women's Rights in Nigeria*,14 Glob. J. Human-Soc. Sci.: Economics, 49 (2014).

2 http://worldpopulationreview.com/countries/nigeria-population/ (last visited Oct. 2, 2019).

3 United Nations Human Rights Office Of The High Commissioner, *OHCHR in Nigeria 2019*, https://www.ohchr.org/EN/Countries/AfricaRegion/Pages/NGSummary2019.aspx (last visited Oct. 2, 2019).

Manuscript received: December 13, 2019; review completed: February 21, 2020; Accepted: March 29, 2020

I. Introduction

The United Nations General Assembly in 2015 adopted the "2030 Agenda for Sustainable Development"[4] that includes seventeen (17) 'Sustainable Development Goals' ("SDGs") enshrined on the principle of "leaving no one behind". SDG Goal 5, specifically provides for Gender equality and empowerment of all women and girls. Nigeria has always upheld the erstwhile 'Millennium Development Goals' ("MDGs"), and the present SDGs as being critical to economic development of the nation. The first National Voluntary Review ("NVR") on implementation of the SDGs in the Federal Republic of Nigeria,[5] on the issues on SDG goal 5, noted that Nigeria has continuously highlighted the importance of gender equality and women empowerment in the advancement of women and the growth of the economy. The review recognizes that certain challenges are thrown up in trying to achieve this, such as customs encouraging early marriage of girls, lack of education for girls, discrimination in accessing ownership of land and property, amongst others. However, Nigeria to tackle this has existing structures in place, such as the SDGs Office, Federal Ministry of Women Affairs, the Judiciary, amongst others to create opportunities to curb discrimination against women. Nigeria is a signatory to the Convention on the Elimination of all Forms of Discrimination ("CEDAW") and in 2016, Nigeria approved the National Gender Policy which is guided by CEDAW to deal with the issue of elimination of all forms of discrimination against women.

The United Nations Secretary General, in analyzing progress of SDG Goal 5 in 2018, stated amongst others, that:

> *"While some forms of discrimination against women and girls are declining, gender inequality continues to hold women back and deprives them of basic rights and opportunities. Empowering women requires addressing structural issues such as unfair social norms and attitudes as well as developing progressive legal frameworks that put men and women on the same level".*[6]

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4 http://www.un.org/sustainabledevelopment/news/communications-material/(last visited Oct. 2, 2019).

5 Federal Government of Nigeria, Implementation of the Sustainable Development Goals - A National Voluntary Review, (2017), https://sustainabledevelopment.un.org/content/documents/16029Nigeria.pdf(last visited Mar. 26, 2020).

6 Report of the Secretary-General, *Progress Towards The Sustainable Development Goals*., E/2018/64, (May 10, 2018), https://unstats.un.org/sdgs/files/report/2018/secretary-general-sdg-report-2018--EN.pdf (last visited Oct. 2, 2019).

One key way to address the unfair discriminatory norms and attitudes against women is through judicial pronouncements, utilizing the human rights provisions in the Nigerian Constitution (the "Nigerian Constitution (1999)"),[7]supported by those regional and international human rights instruments that Nigeria has acceded to.

The Nigerian Constitution (1999) provides for the Judicature in Chapter VII. The highest Court of the land, the Supreme Court of Nigeria has the jurisdiction to hear and determine final appeals from the Court of Appeal, on constitutional matters as well as other issues, and human rights matters fall under constitutional issues. The Supreme Court can hear appeals as of right in:

> *"decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person"*[8]

The Court of appeal, the Federal High Courts, the High Courts and other lower courts, all have jurisdiction to adjudicate on cases with human rights issues brought before them, though appeals lie to the next higher level of the court's hierarchical system.

Chapter IV of the Nigerian Constitution (1999) provides provision for 'Fundamental Human Rights' from sections 33 to 46.[9] These rights are in consonance with the civil and political rights enunciated in the "International Covenant on Civil and Political Rights 1966" and the "African Charter on Human and Peoples' Rights 1979". By virtue of Chapter 10of the "Laws of the Federation of Nigeria", the human rights provisions in the "African Charter on Human and Peoples' Rights 1979" have been assimilated into the laws of Nigeria, and therefore, can be utilized by the Courts in adjudication as domestic law.

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7 Constitution of Nigeria (1999).

8 *Id.*§233(2)(C).

9 *Id.*§33-46. Right to life, right to dignity of human person, right to personal liberty,right to fair hearing,right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria.

II. Nigeria's Obligations Under Core International Human Rights Instruments

There are nine (9) core international instruments[10] with specified UN Committee of experts to monitor the implementation by state parties. Nigeria is a party to all the nine (9) international instruments. As a state party, Nigeria's implementation of these instruments could be either through the Executive, Legislative and Judicial arms of government. Some of the key human rights instruments are as follows:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965 ("ICERD")[11]
- International Covenant on Civil and Political Rights 1966 ("ICCPR")[12]
- International Covenant on Economic, Social and Cultural Rights 1966 ("ICESCR")[13]
- Convention on the Elimination of All Forms of Discrimination Against Women 1979 ("CEDAW")[14]
- Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 ("CAT")[15]
- Convention on the Rights of the Child 1989 ("CRC")[16]
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 ("ICMW")[17]

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10 OHCHR - The Core International Human Rights Instruments and Their Monitoring Bodies. https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

11 G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965).

12 G.A. Res. 2200A (XXI), International Covenant on Civil and political Rights (Dec. 16, 1966).

13 G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

14 G.A. Res. 34/180, Convention on the Elimination of All forms of Discrimination Against women (Dec. 18, 1979).

15 G.A. Res. 39/46, Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984).

16 G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

17 G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Dec. 18, 1990).

- International Convention for the Protection of All Persons from Enforced Disappearance 2006 ("CPED")[18]
- Convention on the Rights of Persons with Disabilities 2006 ("CRPD")[19]

Some of these instruments have optional protocols to deal with certain issues of concern.[20] Nigeria, being a party to these human rights instruments, has ratified a large majority of them. The implication of being a party to the instruments means Nigeria has agreed to be bound by the obligations in these international instruments, except where reservations are made. In some instances, Nigeria has gone ahead to domesticate some of these instruments in line with section 12 of the Nigerian Constitution.[21]The question is often asked whether Nigeria is bound by the obligations in those international instruments yet to be domesticated locally, being that Nigeria has signed and ratified them pending domestication? It is the view of the writer that Nigeria is bound by the obligations in those instruments. "Ratification"[22] indicates the intention of the state party to be legally bound by the provisions of a treaty by fulfilling some national legislative requirements. Nigeria's status on core international human rights instruments can be said to reflect the country's seriousness as highlighted by the Office of the High Commissioner on Human Rights (OHCHR).[23] An assessment of the following major international instruments which Nigeria has ratified portrays that the nation will uphold non-discriminatory practices against women and other groups. The instruments also generally guarantee protection of vulnerable groups from

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18 G.A. Res. 61/177, International Convention for the Protection of All Persons from Enforced Disappearance (Dec. 20, 2006).

19 G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities (Dec. 13, 2006)

20 ICERSC-OP 2008, ICCPR-OP1 1966, ICCPR –OP2 Death Penalty 1989, OP-CEDAW 1999, OP-CRC-Armed Conflict 2000, OP-CRC-Sale of Children 2000, OP-CRC-IC 2014, OP-CAT 2002, op-CRPD 2006.

21 Constitution of Nigeria (1999) §12(1) " No treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly"

22 Definition of key terms used in the UN Treaty Collection-Unicef.org. Introduction To The Convention on The Rights of The Child. Definition of Key Terms. www.unicef.org/french/crc/files/Definitions.pdf. *'Ratification' is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the State first signs it and then fulfils its own national legislative requirements. Once the appropriate national organ of the country – Parliament, Senate, the Crown, Head of State or Government, or a combination of these – follows domestic constitutional procedures and makes a formal decision to be a party to the treaty. The instrument of ratification, a formal sealed letter referring to the decision and signed by the State's responsible authority, is then prepared and deposited with the United Nations Secretary-General in New York".*

23 https://www.ohchr.org/EN/Countries/AfricaRegion/Pages/NGIndex.aspx. (lastvisitedOct. 2, 2019).

undignified and humiliating practices. Ratification year of these instruments by Nigeria are noted below, and they demonstrate that the nation being a respected member of the comity of nations has indicated its readiness to be bound by the agreements therein from those dates.

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - Ratification 1985
- International Covenant on Civil and Political (ICCPR) - Ratification 1993
- International Covenant on Economic, Social and Cultural Rights (ICE-SCR) -Ratification 1993
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) - Ratification 2001
- Optional Protocol of the Convention against Torture24 ("CAT-OP") -Ratification 2009
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) - Ratification 1967
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) - Ratification 2009
- Convention on the Rights of the Child (CRC) - Ratification 1991
- Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography25("CRC-OP-SC") - Ratification 2010
- Convention on the Rights of Persons with Disabilities (CRPD) - Ratification 2010

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24 G.A. Res. 57/199, Optional Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Jun. 22, 2006).

25 G.A. Res. 54/263, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (May 25, 2002).

A survey of the status of Nigeria on commitment to core international human rights instruments reveal that the nation has ratified over 90% of the instruments. What does this signify? It connotes the country's intention to be completely bound by the human rights provisions therein, as without human rights we cannot live as human beings and no society can develop. States are, therefore, obligated in line with the treaty's provisions, to put in place legal, judicial and administrative framework to effectively implement the treaties. Nigerian Courts, as part of the nation's implementation mechanism, are, therefore, expected to utilize these human rights instruments in the dispensation of justice. In the area of the human rights of women (women's rights) which this paper addresses, there is the need for the judiciary to utilize the human rights principles highlighted in the treaties in striking down cases on discrimination and other disparities.

III. The Place of Customary Laws in Hierarchy of Laws in Nigeria

For a better appreciation of the position of customary law in the Nigerian legal system, it is important to briefly evaluate the hierarchy of laws in Nigeria. The highest law of the land is the Nigerian Constitution (1999). Next in the hierarchy are Laws enacted by the Federal Legislature (National Assembly), followed by laws made by the State Houses of Assembly of the 36 States of the Nigerian Federation, and finally By-laws of Local Government Councils and subordinate legislations.[26] It is important to point out that customary law is not stated among the hierarchy of laws in Nigeria**.** Courts in Nigeria are enjoined to apply customary law when it arises as an issue in an action before the courts. However, customary law is not written and codified and as such, before a norm of customary law is applied it has to be proved. This means that the party relying on it has to plead it and lead credible evidence in proof of the applicable customary law.

The State High Courts in Nigeria are created by the Nigerian Constitution (1999).[27] Each State has a statute known as the "High Court Law", which sets out their functions, powers, duties and other ancillary matters. For instance, section 13(1) of the "High Court of Bendel State Law, 1976", as applicable to Edo State, provides as follows:

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26 Ese Malemi, *The Nigerian Legal System: Text And Cases*, 33-35. (Lagos: Princeton Pub. Co., 3rd ed, 2012).

27 Constitution of Nigeria (1999) §270.

"The High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any written law for the time being in force and nothing in this law shall deprive any person of the benefits of any such customary law."

Also section 18 of the "Evidence Act"[28] provides that:

"In any judicial proceeding where any custom is relied upon it shall not be enforced as law if it is contrary to public policy or is not in accordance with natural justice, equity and good conscience".

The cumulative effect of these statutory provisions has given rise to what is known as the "repugnancy doctrine" which a court applies before a rule of customary law is enforced in any proceeding. It is important to note that international treaties and conventions only become a part of Nigerian law upon ratification, accession and domestication by an Act of the National Assembly of the Federation. In other words, those treaties that Nigeria has signed, ratified, acceded to and domesticated, occupy a superior position in the hierarchy of laws in Nigeria than customary law.

IV. Judicial Approach to Protection of Women's Rights and Utilization of International Human Rights Treaty Provisions or Otherwise

The Nigerian Supreme Court, the highest court of the land, hears and determines appeals from the Court of Appeal in the exercise of its appellate jurisdiction. The Court of Appeal has jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the lower courts.

The following ten (10) Nigerian court judgments on the protection of women from discrimination have been considered hereunder:

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28 Evidence Act, Cap. E14, § 18(3) (Nigeria).

- *Mojekwu v. Mojekwu* (1997)[29]
- *Uke & Anor. v. Iro* (2001)[30]
- *Augustine Nwafor Mojekwu v. Mrs. Theresa Iwuchukwu* (2004)[31]
- *Okonkwo Timothy (Alias Job) v. Sunday Oforka & Anor.* (2007)[32]
- *Tolani v. Kwara State Judicial Service Commission & Ors.* (2009)[33]
- *Ukeje v. Ukeje* (2014)[34]
- *Anekwe v. Nweke* (2014)[35]
- *Okeke v. Okeke* (2017)[36]
- *Ordu & Ors. v. Elewa & Ors.* (2018)[37]
- *Dr. Priye Iyalla-Amadi v. Comptroller General Nigeria Immigration Service* (2009)[38]

Nine (9) of them are cases that were heard and determined by the Supreme Court of Nigeria and/or the Court of Appeal of Nigeria. The 10th case, *Dr. Priye Iyalla- Amadi v. Comptroller General Nigerian Immigration Service*, a landmark case in Nigeria in 2009, was heard and determined by the Federal High Court. The analyses of these cases discuss women and discrimination issues at two levels:

- *Whether the judgments confront barriers that promote discrimination and inequality against women, as well as*

29 *Mojekwu v. Mojekwu* [1997] 7 NWLR (Pt. 512) 283 (Nigeria).

30 *Uke & Anor. v. Iro* [2001]11 NWLR (pt.723) 196 (Nigeria).

31 *Augustine Nwafor Mojekwu v. Mrs. Theresa Iwuchukwu* [2004] NWLR (pt. 883) 196 (Nigeria).

32 *Okonkwo Timothy (Alias Job) v. Sunday Oforka & Anor.* [2007] 9 NWLR (pt. 1091) (Nigeria).

33 *Miss Yetunde Zainab Tolani v. Kwara State Judicial Service Commission & Ors.* [2009] *LPELR-CA/IL/2/2008* (Nigeria).

34 *Mrs. Lois Chituru Ukeje & Anor. v. Miss Gladys Ada Ukeje* [2014] 11 NWLR (Pt. 1418) 384(Nigeria).

35 *Onyibor Anekwe & Anor. v. Mrs. Maria Nweke* [2014] 9 NWLR (pt. 1412) 393 (Nigeria).

36 *Okeke v. Okeke* [2017]LPELR-42582(CA) (Nigeria).

37 *Ordu & Ors. v. Elewa & Ors.* [2018] 17 NWLR (Pt. 1649) 515 (Nigeria).

38 *Dr. Priye Iyalla-Amadi v. Comptroller General Nigeria Immigration Service*. Suit No FHC/PH/CS/198/2008 (Unreported) (Judgment delivered by Justice G.K. Olotu on June 15,2009)

- *Whether the courts utilized human rights principles on non-discrimination grounded in international and regional instruments to which Nigeria is obligated, in strengthening the judgments of the courts.*

The cases considered hereunder span from 1997 to 2018, a period of about 21 years, a period within which Nigeria has been a respected member state of the United Nations, and party to several international human rights treaties and conventions.

A. Mojekwu v. Mojekwu (1997)

This is an appeal against the judgment which recognized a custom which discriminated against women inheriting property. In this case, Justice Niki Tobi, J.C.A. of the Court of Appeal, in analyzing the '*oli-ekpe'* custom which prohibits inheritance rights of females, said:

> "*…is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilized sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the women folk in this country. They are regarded as inferior to the men folk. Why should it be so? All human beings - male and female - are born into a free world, and are expected to participate freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis (sic) to a society built on the tenets of democracy which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi 'oli-ekpe' custom relied upon by the appellant, are not consistent with our civilised world in which we all live today, 'including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody*

do such a thing. On my part, I have no difficulty in holding that the 'oli-ekpe' custom of Nnewi, is repugnant to natural justice, equity and good conscience."[39]

This decision of the court in 1997 did protect the right of women not to be discriminated against and that they therefore can inherit property. The repugnancy doctrine was utilized to the effect that the courts shall not enforce any custom as law if it is contrary to public policy or repugnant to natural justice, equity and good conscience. The rights of women to be free from discrimination as guaranteed by the human rights provisions in the Nigerian Constitution (1999) as well as the CEDAW, which prohibit discrimination on the ground of sex, were also noted. This landmark judgment of the Court of Appeal continues to be one of the celebrated cases upholding the rights of women in Nigeria, and utilizing international human rights instruments in the process. Nigeria signed CEDAW in 1984, and ratified it in 1985, signifying the nation's intentions to be bound by its provisions. The learned judge's affirmation in the judgment quoted above, on the prohibition of discrimination against women, would imply that they fall under the core human rights which are non-derogable. Under customary international law, these core human rights (*jus cogens* from which no derogation is permitted) include the prohibition of slavery, torture, genocide, arbitrary detention and racial discrimination. As customary international law develops and progresses, so will the peremptory norms increase.

B. Augustine Nwafor Mojekwu v. Mrs. Theresa Iwuchukwu (2004)

This decision of the Supreme Court case arose from an appeal from the judgment of the Court of Appeal in the above cited case of *Mojekwu v. Mojekwu*. While the Supreme Court upheld the judgment of the Court of Appeal, it was critical of the court's reliance on concepts of English law, when it noted that:

"Issue 1 raises the question whether the Court of Appeal was right in declaring the "oli-ekpe" custom of Nnewi to be repugnant to natural justice, equity and good conscience? The evidence led on behalf of the appellant is that under Nnewi custom a male child inherits property; and if no male child, the brother of the deceased owner of prop-

39 *Mojekwu*, p 304-305.

erty inherits even where the man was survived by female children. In either case, the person who so inherits, whether the son or brother of the deceased, is known as the 'oli-ekpe'. ...I do not think it was right for the court below to declare the said 'oli-ekpe' custom repugnant to natural justice, equity and good conscience in the circumstances of this case…. The court should limit itself to issues joined by the parties on their pleadings. This is essential because to go outside those pleadings is an aspect of a denial of fair hearing which may lead to a miscarriage of justice: These principles apply mutatis mutandis in every situation where a court is faced with a custom of a people and it conceives that such a custom may have some element of repugnancy. It must be remembered that a custom cannot be said to be repugnant to natural justice, equity and good conscience just because it is inconsistent with English law concept or some principle of individual right as understood in any other legal system: So the court must hear the parties and act with solemn deliberation over all the circumstances before declaring or pronouncing a custom repugnant. Admittedly, there may be no difficulty in reaching a decision in some obviously outrageous or needlessly discriminatory customs. In some other cases, it may not be so easy. That is where the repugnancy principle should be dispassionately considered and applied. In the present case, because of the circumstances in which it was done, I cannot see any justification for the court below to pronounce that the Nnewi native custom of 'oli-ekpe' was repugnant to natural justice, equity and good conscience...the learned Justice of Appeal was no doubt concerned about the perceived discrimination directed against women by the said Nnewi 'oli-ekpe' custom and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at, and is capable of causing strong feelings against, all customs which fail torecognise a role for women..."[40]

This pronouncement from the highest court of the land, flung Nigeria's wobbly progress towards promoting and protecting women's rights to inheritance back into the dark ages. As aptly noted by a Nigerian women's rights activist, Funmi Falana:

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40 *Augustine Nwafor Mojekwu*, pp 215-217.

> *"The Courts also in other not to be seen as superimposing European way of life upon our culture in Mojekwuv. Iwuchukwu, declared that customs cannot be said to be repugnant to natural justice, equity and good conscience because it is inconsistent with English law concept or some principle of individual right as understood in any other legal system…"*[41]

The Supreme Court in this case, clearly did not accept, recognize or apply international human rights law principles to which Nigeria is obligated. Pats Acholonu, J.S.C., in concurring with the lead Judgment said*:*

> *"I am well aware of how the Court of Appeal imported into this case the Beijing Conference declarations on discrimination against women which sought to establish and protect the rights of women by an avowal of fighting discrimination against women. This case has really nothing to do with the discrimination against women but rather on the avarice displayed by the appellant to deprive the respondent and her sister of their due rights…"*[42]

C. Uke &Anor. v. Iro (2001)

This 2001 Court of Appeal judgment concern the issue of whether a custom that prevents a woman from giving evidence in relation to title to land is not one that is discriminatory and a breach of women's human rights. Pats Acholonu, J.C.A in the judgment said:

> "*They argue that by Nneato Nnewi Custom, a woman cannot give evidence in relation to title to land. This assertion or argument is oblivious of the Constitutional provision, which guarantees equal rights and protection under the law. The rights of all sexes are protected under the organic law of the land. I refer to section 39(1) of the 1979 Nigerian Constitution... This same provision is now repeated in section 41(1) of the 1999 Constitution. Any customary law, which*

41 Funmi Falana, *Topical Issues On Women's Rights In Nigeria*, 50 (University of Lagos Press and Bookshop, 2018).

42 *Augustine Nwafor Mojekwu*, p 222.

> *flies against decency and is not consonant with notions, beliefs or practice of what is acceptable in a court, where the rule of law is the order of the day, should not find its way in our jurisprudence and should be disregarded, discarded and dismissed as amounting to nothing. Any law(s) or custom that seek to relegate women to the status of a second class citizen, thus, depriving them of their invaluable and constitutionally guaranteed rights, are laws and customs fit for the garbage and consigned to history. Let us consider the case of Mojekwu v. Mojekwu (1997) 7 NWLR (pt.512) 283…A custom which strives to deprive a woman of constitutionally guaranteed rights is otiose and offends the provisions that guarantees equal protection under the law…It is no issue at all. It offends all decent norms as applicable in a civilized society."*[43]

This 2001 Court of Appeal judgment does uphold the right of non-discrimination against women. The Court, in its judgment, referred to and utilized the human rights guarantees of equality of protection in the Nigerian Constitution (1999). No international human rights principles and laws in international treaties were raised in support of the constitutional guarantees and the judgment of the court.

D. Okonkwo Timothy (Alias Job) v. Sunday of orka & Anor.(2007)

This is a Court of Appeal judgment, which amongst other issues, considered whether the '*Oraifite'* native law and custom which does not allow women to deal in land is discriminatory. SotonyeDenton-West, J.C.A., delivering the leading judgment, noted as follows:

> *"I am constrained to agree with the trial Judge that by virtue of the provisions of the constitution, the custom of the Oraifite as regards devolution of land under the native law and custom of the Oraifite should not act as a bar that shall deprive or forbid women and children from dealing in land. The authority relied on by the appellant in his brief does not in any way support his contention and they are anti the constitutional provisions contained in sections 42 and 43 of*

43 *Uke & Anor.,* pp 202-203.

the Constitution of the Federal Republic of Nigeria. The decision of the lower court should be commended as a proactive decision since it acts as a step in upholding the constitutional rights of the individual in owning and disposing of land in accordance with the ground norm. No law or custom that stands in the way of our Constitution should be allowed to stand tall no matter the circumstance. The 3rd respondent has not really challenged the claim of the applicants that they are entitled to own land in accordance with the provisions of the 1999 Constitution regardless of their sex or age and that they must not be discriminated against or molested. What the 3rd respondent has done is to challenge the applicant's right to own land under Oraifite native law and custom as women and children do not own land under that custom. What about the rights to own land under the Constitution? A custom cannot derogate from the clear provisions of the Nigerian Constitution dealing with right to own movable and immovable properties. Women can own landed properties ... I too have no difficulty in holding that the Oraifite native law and custom which does not allow women to deal in land is not only unconstitutional but repugnant to natural justice, equity and good conscience..."[44]

The court clearly upheld the right of women to own landed property in the judgment. The constitutional human rights guarantees, recognizing every citizen's right to acquire and own property as well as protection from discrimination on the basis of sex, were utilized to strengthen the findings in the judgment. The judgment however did not refer to international human rights principles and laws in treaties acceded to by Nigeria.

44 *Uke & Anor.,* pp 213-217.

E. Miss Yetunde Zainab Tolani v. Kwara State Judicial Service Commission & Ors. (2009)

This is a judgment of the Court of Appeal where the provisions of the Nigerian Constitution (1999) as amended, were considered with respect to discrimination against women in employment. Sotonye Denton-West, J.C.A., in her judgment, said:

> *"Therefore in my view the Appellant's marital status as enshrined in our domestic laws with special reference to the 1999 Constitution of the Republic of Nigeria and particularly since we are a nation amongst the committee of nations, I am of the view that her marital status rights as protected by International Human Rights domiciled laws as applicable to this country ought to be reflected in this appeal, otherwise the appellant may still be deprived of fundamental justice. For the benefit of the appellant and many other women who are constantly subjected to this type of discrimination. I seek to refer to some salient provisions of International Laws that has been domiciled and ratified as part of our law in Nigeria. Optional Protocol to the Convention on the Elimination of Discrimination…sets out the Principles of Equality and nondiscrimination of women as embodied in the United Nation Charter, the Universal Declaration of Human Rights, and other International Human Instruments, including the Convention on the Elimination of all Forms of Discrimination against Women. It further asserts the determination of state parties which adopt the protocol to ensure the full and equal enjoyment by women of all Human Rights and Fundamental freedom and to take effective action to prevent violations of these rights and freedom… the Convention on the Rights of Women with disabilities, especially when discriminated against in their place of work… The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women. The World conference on Human Rights urges Governments, the Judiciary, other institutions, intergovernmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child…"*[45]

45 *Tolani*, pp. 54-57.

The Court of Appeal, in this case, explored the provisions of important core human rights instruments in arriving at, and strengthening its judgment. It explored and utilized the significance of the provisions of the human rights instruments that Nigeria had acceded to. Specifically, the court utilized the human rights principles on non-discrimination and equality as laid down in the CEDAW, the Optional Protocol to CEDAW, Universal Declaration on Human Rights (UDHR), the United Nations Charter, the CRPD, Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in 1993 on commitment of states to promoting all human rights instruments relating to women. These instruments were utilized in conjunction with the non-discrimination provisions in the Nigerian Constitution (1999). There is no doubt that this judgment portrays positive advancement as it enhances jurisprudence in this area of women's rights.

F. Dr. Priye Iyalla-Amadi v. Comptroller General Nigeria Immigration Services (2009)[46]

The case was brought before the Federal High Court, to decide whether the Nigerian Immigration Services (NIS) administrative policy that compelled married Nigerian women to produce letters of consent from their husbands as a condition for processing their applications for international passports was a violation of the right to non- discrimination on grounds of sex as guaranteed in the Nigerian Constitution (1999) and the African Charter on Human and Peoples' Rights.

The Nigerian Immigration Services (NIS) averred that by the policy of the Service, it was justifiable that a letter of consent from the husband of a married woman must be submitted before the issuance of an international passport to the woman. According to the NIS,[47] this was because:

i) a Nigerian woman who consents to marry a Nigerian man is expected to have absolute faith in her husband, allow him to know her movement, obey and consent to his wishes in all matrimonial mat-

46 *Dr. Priye Iyalla-Amadi v. Comptroller General Nigeria Immigration Service*. Suit No FHC/PH/CS/198/2008 (Unreported) (Judgment delivered by Justice G.K. Olotu on June 15, 2009). *Also see* https://www.vanguardngr.com/2009/06/court-voids-immigration-condition-for-issuing-passports-to-married-women/ (last visited Jun. 6, 2019).

47 *Id.*, pp. 3-4.

ters including any temporary or permanent departure from his sight;

ii) Nigerian women are classified along with minors by the Nigerian government through the Nigeria Immigration Services (NIS) in the category of persons who require consent of the head of the family for the procurement of passports;

iii) the requirement of consent was put in place to perpetuate the authority of men over their wives no matter their status in the society;

iv) married men being breadwinners in their families move about to provide for them, and therefore do not need consent of their families or wives to do this;

v) the requirement for consent is applicable to all married women in Nigeria and was necessary to avoid breakdown of the marriage institution in Nigeria; and

vi) obtaining a Nigerian government passport is a privilege and therefore the conditions must be met before international passports are issued.[48]

The Court declared as unconstitutional, the administrative policy of the Nigerian Immigration Service (NIS) compelling a married Nigerian woman to produce a letter of consent from her husband before an international passport can be issued to her. G. K. Olotu, Justice of the Federal High Court said:

> "*...From the wording of the Constitutional provision reproduced herein, all citizens of Nigeria are put on the same pedestal, irrespective of sex, status, religion, ethnic group, place of origin or political opinion. Section 17 states that all citizens shall have equality of rights etc, section 42 in particular prohibits discrimination on these grounds by any law in force in Nigeria, or any executive or administrative act of government... Most absurd of the defendants' justification for their discriminatory policy is the classification of married women along with minors...In my humble opinion, the defendants classification of married women along with children is a desecration of the provisions of the Constitution... The sum total of the defence of the defendants is an admission of the discriminatory executive and administrative action against married women on*

48 *Id.*, pp. 4-5.

grounds of their female sex and their marital status…The defence of the defendants merely showed that the policy was a cunning, surreptitious and high powered calculated attempt to subjugate women as if they were still in medieval times. This kind of policy has no place in the 21st Century Nigeria…"[49]

The Court utilized the human rights provisions on non-discrimination and equality of rights in the Nigerian Constitution 1999 and the African Charter on Human and Peoples' Rights, in the judgment. International Human Rights instruments such as the Vienna Declaration and Program of Action, the Beijing Declaration and Platform for Action 1995 and CEDAW to which Nigeria is obligated were also referenced in the judgment in relation to Equality of rights and non-discrimination principles.

G. Mrs. Lois Chituru Ukeje & Anor. v. Mrs.Gladys Ada Ukeje **(2014)**

The issue before the Supreme Court in this case was on the right to freedom from discrimination: Whether the Igbo native law and custom which disentitles a female from inheriting in her late father's estate is in conflict with Section 42(1)(a)(2) of the Nigerian Constitution (1999) on non-discrimination.

Olabode Rhodes-Vivour, J.S.C., (delivering the Leading Judgment), said:

"*The respondent is a daughter of L.O. Ukeje (deceased). L.O. Ukeje deceased is subject to the Igbo Customary Law. Agreeing with the High Court, the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting in her late father's estate is void as it conflicts with sections 39(1) (a) and (2) of the 1979 Constitution (as amended). This finding was affirmed by the Court of Appeal. The finding remains inviolate. Section 39(1),(a) (2) of the 1979 Constitution is now contained in the 1999 Constitution as section 42(1), (a), (2) and it states that: "42(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only*

49 *Id.*, pp. 8-11.

that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups places of origin, sex, religion or political opinions are made subject: or ... (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth….No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently the Igbo customary law which disentitles a female child from partaking, in the sharing of her deceased lather's estate is in breach of section 42 (1) and (2) of the Constitution, afundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution."[50]

The Supreme Court utilized the non-discriminatory human rights principle in the Nigerian Constitution (1999) in striking down the custom that disinherits female children born out of wedlock from their late father's estate. No reference was made to international human rights treaties to which Nigeria is obligated.

H. Onyibor Anekwe & Anor. v. Mrs. Maria Nweke (2014)

This Supreme Court, in this judgment, dealt with the custom of Awka community which denies a woman of her rights to her deceased husband or father's property. The court held that this was repugnant to natural justice, equity and good conscience.

Nwali Sylvester Ngwuta, J.S.C. said:

"My noble Lords, the custom pleaded herein, and is a similar custom in some communities wherein a widow is reduced to chattel and part of the husband's estate, constitutes, in my humble view, the height of man's inhumanity to woman, his own mother, the mother of nations, the hand that rocks the cradle. The respondent is not

50 *Ukeje*, paras. E-G.

> *responsible for having only female children. The craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world. Children, male or female, are gifts from the Creator for which the parents should be grateful. The custom of Awka people of Anambra State pleaded and relied on by the appellant is barbaric and takes the Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished…"*[51]

Clara Bata Ogunbiyi, J.S.C., on whether any culture that disinherits a daughter from her father's estate or wife from her husband's property should be punitively and decisively dealt with, said:

> *"I hasten to add at this point that the custom and practices of Awka people upon which the appellants have relied … is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with…For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning. It is indeed much more disturbing especially where the counsel representing such perpetrating clients, though learned, appears comfortable in identifying, endorsing and also approving of such a demeaning custom…"*[52]

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51 *Anekwe*, p. 425.

52 *Id.*, pp. 421-422.

The Supreme Court, in the above case, clearly utilized the non-discriminatory right in the Nigerian Constitution (1999). It, however, did not refer to international human rights treaties to which Nigeria is obligated in the judgment.

I. Mr. Afam Okeke v. Madam Helen Okeke (2017)

The Court of Appeal, in this case, dealt with the application of Section 42 of the 1999 Constitution, as amended, with respect to inheritance, the legality of any custom that disinherits a daughter from her father's estate or wife from her husband's property.

Tom Yakubu, J.C.A., said:

> *"…I should say that in appropriate circumstances, the applicability of Section 42(2) of the 1999 Constitution (supra) shows up where for example, female children are denied their right to inheritance of the estate of their deceased father. Such instances which had to do with the notorious and nebulous Nnewi native law and custom had reared its ugly head in several cases before which came to this Court on appeal…The customs of Egede people and of the Igbos in general which seek to discriminate against women in any situation on account of their sex or gender is in my humble view that which not only run foul of the Constitution but is repugnant to natural justice, equity and good conscience and has no place in the modern society… By virtue of the provisions of Section 42(1) (a) (b) & (2) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, read together with Section 18(3) of the Evidence Act, 2011; the Egede custom which the appellant prided himself on, which sought to disentitle the female children from inheriting their deceased father's property, cannot be a thing of pride in the 21st century Nigeria. Such stone age custom can no longer hold sway because it is not in consonance with natural justice, equity and good conscience… A custom which enables a child born and fathered by another man to claim and inherit the property of a man who had died before he was even conceived by his mother and to disinherit the man's biological child because she is a female is certainly inconsistent with sound reasoning. It is repugnant to natural justice, equity and good*

> *conscience…A custom which enables a complete stranger to inherit what a man owned and worked for all his life because he has no male child cannot be allowed to continue…"*[53]

The Court of Appeal in this 2017 case on women's right to inheritance, utilized the constitutional human right provision of non-discrimination and the repugnancy doctrine, in deciding that the woman had a right to inheritance from her father's estate or her husband's property. No international human rights treaty was cited in the judgment.

J. Ordu & Ors. v. Elewa & Ors. (2018)

This Supreme Court judgment was on whether a custom which prohibits the right of ownership by descendants of a female child was constitutional.

Ejembi Eko, J.S.C., in the judgment, said*:*

> *"The enactment of section 39 (2) of the 1979 constitution in pari material with section 42 (2) of the 1999 Constitution, which provides that no citizen shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth renders any rule of customary law which denies a person right of ownership on the basis of being the descendant of a female child is a nullity. In this case, the assertion of the appellants that the respondents, being descendants of a daughter of their common ancestor, were not entitled to inherit the land in dispute, could not stand being a nullity on the ground of repugnancy..."*[54]

The Supreme Court focused on the non-discrimination provision in the Nigerian Constitution (1999) in deciding the judgment. There was no reference to international human rights treaties to which Nigeria is obligated.

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53 *Okeke*, pp. 46-55, 57-58.

54 *Ordu*, p. 547.

V. Overview of the Use of International Human Rights Instruments in the Judgements

Of the ten (10) Nigerian superior courts judgments above, only in three (3) judgments[55] utilized international human rights and regional human rights treaties copiously, in supporting the Nigerian constitutional provision on non-discrimination. A recurring question in the judgments was the 'repugnancy doctrine'. In over half of the judgments, the courts negated the customary laws and practices and declared them repugnant to natural justice, equity and good conscience. However, the writer is concerned by the seemingly judicial reluctance to acknowledge that the existence of those human rights provisions in the Constitution are derived from some of the various international conventions and treaties which Nigeria has ratified. Only three judgments identified above displayed advanced knowledge of the import of the international human rights instruments utilized. One of the judgments specifically utilized the United Nations Charter 1945, the Universal Declaration on Human Rights (UDHR) 1948, CEDAW, Vienna Declaration and Program of Action 1993, outcome of the World Conference on Human Rights 1993 and the African Charter on Human and Peoples' Rights (ACHPR) 1981.

Generally, in the other judgments, the courts in adjudicating, concentrated on using the constitutional human rights provision on non-discrimination, and the repugnancy doctrine. Does this portray that the courts do not fully appreciate the import of these international human rights treaties to which Nigeria is obligated and their responsibility in utilizing them as judges? The judiciary has an important role to play through utilizing the principles and provisions of these treaties and conventions in their judgments to demonstrate the implementation in Nigeria of those human rights principles and norms to which Nigeria is bound. These are legally binding treaties whose ratifying states pledge to observe the specific rights enumerated in the instruments. The instruments generate strong expectations within the comity of nations that the human rights principles entrenched therein will be observed by all member nations. The variety and spirit of the treaties address either one or the other of three broad concerns, namely: the elimination of discrimination, the protection of vulnerable groups and persons and the fight against inhuman practices. These three core concerns run through

55 Denton-West, J.C.A. in *Tolani v. Kwara State Judicial Service Commission &Ors.* (2009), Niki Tobi J.C.A. in *Mojekwu v. Mojekwu* (1997), Honourable Justice G.K. Olotu in *Dr.PriyeIyalla-Amadi v. Comptroller General Nigeria Immigration Service* (2009).

the substance of the complaints in the above ten (10) cases brought before the courts for adjudication, namely discrimination against women and the indignity of certain practices meted against women in some communities in Nigeria. It is, therefore, the work of the courts to define the specific scope of each human right infringed upon without forgetting their universal significance in those international instruments that the nation has subscribed to. Why are those human rights protected by those international instruments?

As members of the comity of nations, States are obligated to put legal, judicial and administrative framework in place to facilitate the implementation of the international treaties entered into. Nigeria has a vibrant judiciary in existence that can also facilitate implementation of treaties. Nigeria clearly has a number of customary laws and practices that discriminate against women, as shown from the ten (10) court judgments dealt with in this paper. The judiciary is therefore encouraged to work painstakingly to continue to develop, expand and enrich human rights jurisprudence in the area of women's rights protection through their judgments. Indian court's jurisprudence has exponentially expanded the interpretation of human rights concepts. For instance, the right to life has been held to include the right to a means of livelihood as well as other rights that make enjoyment of the right to life meaningful.[56] It has been further held to include the right to live with dignity.[57] In the Nigerian cases dealt with in this paper, a recurring theme was **'discrimination based on sex resulting in deprivation of women of what is rightly theirs.'** The discrimination in the cases could also be further elucidated as akin to denial of women of their means of livelihood, property, shelter, healthcare, food, etc., and inevitably negatively affecting their right to life and right to live with dignity as human beings. This correlation upholds the hallowed principles of international human rights law, that all human rights are universal, indivisible, equal, inter-related and mutually reinforcing.

This writer is of the view that the application of international human rights principles in domestic cases before Indian courts is worthy of emulation, by the Nigerian judiciary. Though the cases highlighted from India are not focused on women's rights, the ingenuity of the Indian courts in utilizing international human rights principles in the treaties India has acceded to, should be explored

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56 *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC180, (India), *Mohini Jain v. State of Karnataka*, AIR 1992 SC1858,1864 (India).

57 *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC746 (India), *Vikram Deo Singh Tomar v. State of Bihar*, AIR 1988 SC 1782, 1783-84 (India).

further by Nigerian courts in the adjudication of cases on women's human rights. For instance, the Indian Supreme Court in the case of Francis Coralie, said:

> *"…The fundamental right to life which is the most precious human right and which forms the arc of all other rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing, and shelter over the head..."*[58]

Justice P. N. Bhagwati, the renowned jurist of the Indian Supreme Court, said on the applicability of international human rights principles that:

> *"…I may point out that sometimes a question is raised by judges as to how we can incorporate into our domestic jurisprudence, economic and social rights embodied in the International Covenant on Economic Social and Cultural Rights, if they represent merely objectives which are to be attained by a State to the extent to which its resources may permit. But I do not think this question presents any real difficulty. In the first place, while interpreting and applying the human rights in our respective Constitutions, we can certainly take into account economic and social rights and interpret and apply the specifically enumerated human rights in such a manner as to advance and achieve economic and social rights. The scope and ambit of the specifically enumerated human rights can and must receive colour from economic and social rights (such as those set out in Articles 6, 7 and 10) which can be spelt out from the specifically enumerated human rights and thus become enforceable by the judiciary. Everything depends on the creativity, valour and activism of the judge deciding the particular case… Some of us in India have*

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58 *See Coralie.* In *Olga Tellis*, the Supreme Court again stated that "… *If the right to livelihood is not treated as part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point ofabrogation ... There is thus a close nexus between life and means of livelihood. And as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life."*

> *internalised in our national jurisprudence to a fairly large measure many of the international human rights norms through our own judicial creativity and activism. But this has to become a global phenomenon…*"[59]

The Indian Supreme Court's creativity and activism in the interpretation of core international human rights instruments show that the conventional meaning of concepts like 'right to life' has been overhauled and extended into the field of economic, social, cultural and developmental rights. Economic social and cultural rights are therefore used logically to explain civil and political rights. Can Nigerian Courts follow on these improved approaches to promote and fulfill the country's international human rights obligations?

Section 46 (1) of Chapter 4 on Fundamental Human Rights, in the Nigerian Constitution (1999) provides that:

> "*Any person who alleges that any of the provisions of this chapter has been, is being, or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress."*[60]

Section 46(2) further provides more powers of redress to Judges. The section provides that:

> "*… a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directives as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any right to which the person who makes the application may be entitled under this Chapter."*[61]

The above provisions grant Nigerian Courts the powers to provide respite

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59 Justice P.N. Bhagwati "*Fundamental Rights in Their Economic, Social and Cultural Context*", Developing Human Rights Jurisprudence, Vol. 2, at 82 (1989). https://read.thecommonwealth-ilibrary.org/commonwealth/governance/developing-human-rights-jurisprudence_9781848594654-en#page4.

60 Constitution of Nigeria (1999) § 46(1).

61 *Id.* § 46(2).

for fundamental human rights infractions. The Courts, therefore, possess extensive powers under the Nigerian Constitution (1999) to deal with matters brought before them and therein provide appropriate remedies to bring about substantial justice. In the South African case of *Fose v. Minister of Safety and Security,* the South African Constitutional Court stated that:

> *"…in our context, an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the right entrenched in the constitution cannot properly be upheld or enhanced. Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated. The courts have a particular responsibility in this regard and are obliged to forge new tools and shape innovative remedies, if need be, to achieve this goal*."[62]

The eminent jurist and former Chief Justice of Indian Supreme Court, Justice P.N. Bhagwati questioned the role of judges in the administration of justice, as follows:

> *"…Can judges really escape addressing themselves to substantial questions of social justice? Can they simply turn round to litigants who come to them for justice and the general public that accords them power, status and respect and tell them that they simply follow the legal text, when they are aware that their actions will perpetuate inequity and injustice? Can they restrict their inquiry into law and life within the narrow confines of a narrowly defined rule of law? Does the requirement of constitutionalism not make greater demands on the judicial function..."*[63]

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62 *Fose v. Minister of Safety and Security*, 1997 (3) SA at 786 (S. Afr.).

63 P. N. Bhagwwati, '*Fundamental Rights and in Their Economic, Social, and Cultural Context'*. Judicial Colloquim in Bangalore. 24-26 February 1988. Developing Human Rights Jurisprudence. The Domestic application of International Human Rights Norms. Commonwealth Secretariat. Vol. 1 at 61 (1988), https://www.thecommonwealth-ilibrary.org/commonwealth/governance/developing-human-rights-jurisprudence/fundamental-rights-in-their-economic-social-and-cultural-context_9781848594654-10-en.

He went further to proffer the following advice to judges:

> *"It is a truism as pointed out by a great American judge that the constitution is what judges make it and judges cannot therefore remain oblivious to social needs and requirements while interpreting the constitution. There are normative expectations from judges and these normative expectations arise from the revolution of rising expectations which characterises modern society in most parts of the Third World. The world is at present on the threshold of a new era of freedom and progress because with a passion unequaled in the past century, the peoples of the developing countries are today demanding freedom; not only freedom from arbitrary restraint of authority but also freedom from want, independence from poverty and destitution and from ignorance and illiteracy. It is this freedom which is now demanded by millions of people all over the world and the judges in interpreting the fundamental rights enshrined in the constitution cannot remain aloof and alienated from this demand of the people for social and economic freedom which I subsume under the label social justice".*[64]

VI. Conclusion

Will Nigerian Courts take a cue from the Indian Supreme Courts' innovative human rights jurisprudence development? Can they take that quantum-leap to build up ingenious and practical jurisprudence through their judgments in the area of protection of women's rights? Goal 5 of 2030 Sustainable Development Goals (SDGs), speak about "*Achieving Gender Equality and Empowering all women and girls*". What is the role of the Courts here? How can their judgments continuously promote this goal and Nigeria's international human rights obligations?

The ball is in their 'courts'.

64 *Id.*

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