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ABSTRACT

Polygamy, a practice of marrying more than one wife at the same time and a social construct among traditional societies under customary law has been profiled for prohibition and criminalization under international human rights jurisprudence for been a violation of human rights of equality and non-discrimination of women and their children projecting monogamy as an ideal marriage. This position differed from the African human rights jurisprudence thereby setting the stage for another clash of Modern and Traditional values in the human rights debacle. Using theoretical and doctrinal data from primary and secondary sources, this study interrogated the contextual and substantial framework of international bill of rights and located justifications for international attitude, the influence of Western ideology that guided the adopted position in juxtaposition with justifications for polygamous practice as well as the human rights of polygamists implicit in rights of privacy, individual autonomy, liberty and matrimony, and the impact of such international position would have on settled polygamous families.

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Polygamy, a practice of marrying more than one wife at the same time and a social construct among traditional societies under customary law has been profiled for prohibition and criminalization under international human rights jurisprudence for been a violation of human rights of equality and non-discrimination of women and their children projecting monogamy as an ideal marriage. This position differed from the African human rights jurisprudence thereby setting the stage for another clash of Modern and Traditional values in the human rights debacle. Using theoretical and doctrinal data from primary and secondary sources, this study interrogated the contextual and substantial framework of international bill of rights and located justifications for international attitude, the influence of Western ideology that guided the adopted position in juxtaposition with justifications for polygamous practice as well as the human rights of polygamists implicit in rights of privacy, individual autonomy, liberty and matrimony, and the impact of such international position would have on settled polygamous families. This study found out that no form of marriage was expressly mentioned in the international bill of rights as proscribed or ideal but that the idea was Western-oriented based on their morals and civilization; that human rights of polygamists as well as settled customary marriage structure would be negatively impacted. The study concluded that the position of African jurisprudence on polygamy was preferable as the issue of polygamy should be left for jurisdictions under the margin of appreciation and international advocacy should be directed towards strengthening polygamous marriages

through legislative actions to secure the rights of women more effectively and adopt a paradigm shift from proscription and criminalization to acceptability and recognition.

Keywords: ‘polygamy’, monogamy, human rights, modern, traditional values, marriage.

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I. INTRODUCTION

The term ‘polygamy’ or ‘polygyny’ is a form of marriage practice of marrying more than one wife at the same time.¹ It is a marriage practice associated with customary marriage and famous among traditional African societies inclusive of Nigeria and some religious faiths like the Muslims and some Christian sects. Conversely, ‘monogamy’ is a form of marriage institution between one adult man and woman.² In this study, polygamous marriage is the focus of study and reference will be made to monogamous marriage for the purposes of this conversation primarily and essentially due to the intrusion of international human rights law and practice in the emerging debacle. The aim of the study is polygamy and human rights conundrum: clash of western and traditional values and call for review of international human rights attitude.

¹ AS Hornby, *Oxford Advanced Learner’s Dictionary of Current English* (ed) (5thedn, Oxford: Oxford University Press, 1995) 894.

²Ibid 753.

The specific objectives are: (i) to examine the justifications for the selective profiling and stigmatization of polygamous marriages, (ii) to assess the ideological thinking or values that largely influenced the position of international human rights law and practice on the thematic issue of this conversation, (iii) to examine the human rights of polygamists in the exercise of their right to marry and found a family and (v) to assess the potential implications inherent in the international human rights attitude can, if sustained, throw up in existing polygamous marriages in affected families.

Flowing from the international backlash and stringent calls by international human rights bodies and treaty declarations for abolition and criminalization of polygamous marriage and the vociferous declaration and promotion of monogamous marriage as an ideal one seen as a Western ideology or values of marriage institution against the much cherished historical and traditional values of polygamy under customary law which is of great antiquity among the African traditional societies, the stage is set to interrogate the attitude or stand of international human rights law and practice on polygamy.

This study will adopt a doctrinal design. Reliance will be placed on primary and secondary sources of data critically analyzed through deductive reasoning based on extant statutes and case law. The primary sources include Constitutions of several jurisdictions, statutes, subsidiary legislations, international and regional human rights charters, international treaties and literary works. Secondary sources include case laws, Internet sources, journal articles, textbooks, et cetera. The study is compartmentalized into six parts. Part 1 deals with the introduction of the thematic subject of study. Part 2 will focus on the international human rights treaty and body of scholarship on polygamous marriage and possible justifications for demanding its abolition and criminalization with a comparative study on the African jurisprudence on polygamous marriage. Part 3 will examine the Western ideology and values on 'ideal' marriage based on monogamy and assess how it largely influenced the position of international human rights law and practice on

polygamous marriage indigenous to traditional African societies. Part 4 examines the possible human rights violations of polygamists implicit in their rights to marry and found a family, privacy, liberty and individual autonomy which is central to human rights embodiments. Part 5 will address the legal implications of abolition and criminalization of polygyny as it will certainly affect existing marital contracts, economic and social security of women and children and their inheritance rights. Part 6 will deal with findings, recommendations and conclusion.

In the modern civilization, marriage between consenting adults is a personal decision. The right to marry and found a family is universal and permeates all societies both modern and traditional. However, marriage as an institution has different forms such as civil, customary or religious. Civil marriages are usually regulated by the legal framework of each jurisdiction which defines, confines and limits marriage to a monogamous relationship between one man and one woman to the exclusion of others while the marriage subsists and the couple still alive, otherwise called a statutory marriage. Customary or traditional marriages are performed and regulated in consonance with the traditional norms of each society and polygamy is a relic of customary marriages. Religious marriage is associated with marital relationship performed in accordance with the normative religious rites of the interested couples such as Islamic or Christian doctrinal marriages.

In modern times, polygamous marriages receive different attitude in several jurisdictions either of recognition or proscription. In jurisdictions where polygamy, which is rooted in social construct, is permissible or tolerated, such form of marriage exists in juxtaposition with monogamous marriage regulated by legal framework of each jurisdiction. Where such a mixed form of marriages exist, individuals can, by election, choose to either contract a polygamous marriage under customary law or under the applicable religious canon, or contract a civil marriage under monogamous label regulated by statute. Thus, no man will be permitted to contract the two forms of marriages [that is, civil and later customary] at

the existence of the first civil marriage as such practice is criminalized as an offence of bigamy.³

In Nigerian jurisdiction, both the statute⁴ and case-law⁵ prohibit one man from contracting two or more marriages that are blended with civil and customary unions without cessation of the civil union either by death or divorce notwithstanding religious approval. In the case of *The Queen v Bartholomew Princewill*,⁶ the accused contracted a marriage under the marriage ordinance when he was a Christian. Later, he got converted and became a Moslem and went through another form of marriage under Moslem Law with another woman while the wife of the first civil marriage was alive and the marriage subsisting. He was subsequently arraigned on the offence of bigamy under section 378 of the Criminal Code. The High Court found the accused culpable of the offence charged and he was convicted. Nigerian jurisprudence has confined the fate of children born under subsequent marriage [polygamous] during the pendency of the first civil marriage [monogamous] as illegitimate children and not entitled to any inheritance.⁷ However, the present conversation is not concerned with bigamy or a marital circumstance that grounds the offence of bigamy. The focus as already stated is on polygamous marriage under customary law that has no admixture with additional civil marriage which bigamy frowns at and the corresponding negative attitude of international human rights law and practice against polygamy.

³ Criminal Code Act cap 38 Laws of the Federation of Nigeria 2004, s 370; Penal Code [Northern States] Act Cap P3 Laws of the Federation of Nigeria, ss 384 and 385; Offences Against the Persons Act 1861 United Kingdom, s 57; Anti-Bigamy Act, 1862 United States Sess 2 ch 126 amended by Edmunds Anti-Polygamy Act 1882, 22 stat 30b; Criminal Law (Codification and Reform) Act No 6/2005 Zimbabwe, s 104; Penal Code chap 146 Laws of Zambia, s 166.

⁴ Marriage Act cap M6 Laws of the Federation 2004 which provides thus: 'Whoever, having contracted marriage under this Act or any modification or re-enactment thereof, or under any enactment repealed by this Act, during the continuance of first marriage contracts a marriage in accordance with native law or custom, shall be liable to imprisonment for five years.'

⁵ [1963] NNLR 54 [55].

⁶ Ibid.

⁷ *Osho v Phillips* [1972] All NLR 279.

II. POLYGAMY AND INTERNATIONAL HUMAN RIGHTS LAW

The right to marry and found a family is conceptualized in the international bill of rights instruments. For proper understanding and interpretation of the universal right to marry and found a family within the framework of the Universal Declaration of Human Rights [UDHR]⁸ and its Protocol, the International Covenant on Civil and Political Rights [ICCPR]⁹ respectively, it becomes pertinent to set out the relevant provisions thus:

Men and women of full age, without limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.¹⁰

Marriage shall be entered into only with the free and full consent of the intending spouses.¹¹

The ICCPR's version of the marital rights provisions are more comprehensive but substantially the same with the UDHR. It provides thus:

The right of men and women of marriageable age to marry and found a family shall be recognized.¹²

No marriage shall be entered into without the free and full consent of the intending spouses.¹³

States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution,

⁸ UDHR by the General Assembly Resolution 217A (111) 10 December 1948.

⁹ ICCPR adopted by the General Assembly Resolution 2200A (XXI) 16 December 1966.

¹⁰ UDHR (n 8), art 16(1).

¹¹ Ibid art 16(2).

¹² ICCPR (n 9) art 21(2).

¹³ Ibid art 21(3).

provision shall be made for the necessary protection of any children.¹⁴

A careful and unbiased interrogation of the substantial and contextual provisions of the international human rights instruments attest to the truism that there is no specific provision for any universally recognized or prescribed form of marriage and there is no mention of polygamy or its prohibition. The drafters of the international bill of rights on family and marriage merely prescribed the basis of marriage by placing emphasis on equality of contracting partners, abolition of child marriage and consensus of partners in marriage devoid of any coercion which prohibited forced marriage. If the drafters of the bill of rights had intended monogamous marriage to be the only ideal form of marriage which the international human rights advocacy on family and marriage projects, then such would have been expressly and clearly inserted in the provision under scrutiny.

However, notwithstanding the absence of any express prohibition of polygamous marriage under international law, there is a growing body of international human rights scholarship and treaty declarations that impugn on polygamous marriage as a human rights aberration with strong and vociferous advocacy for its abolition and criminalization. The idea of equality of contracting partners in marriage under Article 16(1) of the UDHR and Article 23(4) of the ICCPR respectively has been used as a launching pad to demystify and demonize polygamous marriage as very discriminatory of women and an undue placement of superiority status on men vis-à-vis women by the Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW],¹⁵ an international treaty. The CEDAW defines 'discrimination against women' as thus: '...[a]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and

fundamental freedoms in the political, economic, social, cultural, civil or any other field.'¹⁶

The CEDAW's advocacy for equality of marital status and rights of men and women was extended to a complete elimination of all cultural or customary normative roles for men and women in marital relationship to the end that there will not be a head and subordinate traditional and natural roles in marriage. It provides thus:

State Parties shall take all appropriate measures:

To modify the 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 or on stereotyped roles for men and women.¹⁷

CEDAW has consistently advocated for reform in the domestic Constitutions of State Parties' jurisdictions to embody legislative and policy measures to ensure rights of men and women and to modify or abolish extant laws, regulations, customs and practices which constituted discrimination against women.¹⁸

Thus, the natural, historical and traditional distinct roles and obligations of men and women in family and marriage considered normative in traditional African societies and even recognized by several religious teachings and practices is under the hammer of international human rights law as discriminatory against women. This ideological thinking of 'equality of rights' to the extent of equality of roles, obligations or responsibilities between men and women in marriage, if intended, is alien to customary marriage especially in Africa and Christian theology making its practicability doubtful. Although shared-responsibilities between spouses in customary marriage is axiomatic and generally accepted, but to obliterate the 'superiority and inferiority' status in marriage as advanced and

¹⁴ Ibid art 21(4).

¹⁵ CEDAW 1979.

¹⁶ Ibid art 1.

¹⁷ Ibid art 5(a).

¹⁸ Ibid art 2(a) - (g).

advocated by international human rights treaty on marriage and family will continue to pose a problem of interpretation and understanding in customary marriage structure in traditional African societies.

Furthermore, if the idea of 'equality of rights' of men and women in marriage is predicated on the basis that men naturally and historically exercises the right to marry more than one woman under polygamous marriage structure which 'right' is not available to women to 'marry' more than one man, which is doubtful, then such argument if presented, is a marital misnomer from the standpoint of history. The idea of polyandry [a woman marrying more than one husband] is anti-social to many societies whether African and Western notwithstanding the form of marriage and should not be used as ground for 'equality of rights' argument.

It is without any equivocation that married women especially under customary polygamous marriages in traditional African societies like Nigeria will not accept the emerging new rights of 'equality of marital rights' with men and will not even accept its non-recognition as discriminatory against women as been advocated by CEDAW. The social construct with religious¹⁹ influences or undertones on marriage and family shapes and determines the construction of marital duties and obligations between spouses in traditional or customary marriages and is regarded as normative which places men in pivotal and affirmative heads with women playing supportive and collaborative roles.

The idea of family as a social construct with religious undertones is further strengthened by the CEDAW's General Recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women's [Economic consequences of marriage, family relations and their dissolution] recognition of

¹⁹ For instance, Christian theology in its sacred book, The Holy Bible in the Book of Ephesians 5: 23-24 stated that: 'For the husband is head of the wife, as also Christ is head of the church; and He is the Saviour of the body. Therefore, just as the church is subject to Christ, so let the wives be to their own husbands in everything.'

family as the basic unit of society and defines family as thus: 'It is a social and legal construct and, in various countries, a religious construct as well as an economic construct'.²⁰ In analyzing formation of various forms of marriages, CEDAW declared further that: 'Marriages may be formed through a variety of customs, ceremonies and rituals that may be sanctioned by the State. Civil marriage is sanctioned solely by the State and is registered. Religious marriage is solemnized through the performance of ritual[s] prescribed by religious law. Customary marriage is undertaken by the performance of ritual[s] prescribed by the customs of the parties' community.'²¹

In such customary marriage structure, 'superiority' and 'inferiority' complexity mantra been alluded to by CEDAW does not define customary marriages in traditional African societies. Indeed, such ideological thinking of marital equality of men and women in the regime of family and marriage rights defined under 'superiority' and 'inferiority' status appellation by CEDAW's treaty is an opportunistic and ambitious intrusion into customary marriage and family structure with a view to blackmailing and profiling it for annihilation. It will inevitably asphyxiate a settled customary union or marriage.

What may be rightly considered as a comprehensive blueprint or framework advocated and promoted by CEDAW on basis to assess equality of marital rights between men and women in family and marriage relationship with a view to the elimination of discrimination against women are conceptualized under Article 16 of CEDAW which provides thus:

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on the basis of equality of men and women:
 - a. The same right to enter into marriage;

²⁰ General Recommendation No 29 on 'Economic consequences of marriage, family relations and their dissolution' CEDAW/C/GC/29, 30 October 2013 para1.

²¹ Ibid para 19.

- b. The same right freely to choose a spouse and enter into marriage only with their free and full consent;
- c. The same rights and responsibilities during marriage and at its dissolution;
- d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- f. The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- g. The same personal rights as husband and wife, including the rights to choose a family name, a profession and an occupation;
- h. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

On its face value and consideration, Article 16 of CEDAW lucidly outlined broad-based standard or universal conditions or grounds for marital equality of spouses in family and marriage relations as a universal guide applicable to any form of marriage, whether monogamy or polygamy. However, the subsequent General Comments issued by CEDAW in the interpretation of its Article 16 stated above have deliberately isolated and singled out polygamous marriage for stigmatization and condemnation as a violation of a woman's right to equality with men and called for its prohibition. It stated thus:

Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States

Parties whose constitution's guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5(a) of the Convention.²²

Article 5(a) referenced in the above quoted General Comment No 21 called on State Parties to take appropriate measures 'to modify the 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 or on stereotyped roles for men and women.'

Thus, the international treaty under focus has provoked a conscious, deliberate and horrendous attack on polygamous marriages associated with customary law and have erroneously located the bane of human rights violations of women in marriages within its precincts as if monogamous marriages are immune from those issues canvassed in the General Comment No 21 as affecting women generally.

It is axiomatic that women rights violations wherever they exist, cut across all forms of marriages, whether polygamous or monogamous, and it is a character deficit of the spouses involved rather than the form of marriage. It is gratifying to note that CEDAW recognized that polygamous marriages depicts the culture and tradition of certain societies and it is part of their personal or customary law. However, the universal advocacy by CEDAW in General Comment No 21 and Article 5(a) respectively for the elimination of historically cultural and traditional values that delineates and defines the practice of polygamy with its structured roles and responsibilities or obligations of spouses in customary marriages amounts to policy summersault and a tall order to indigenous societies. It is a direct and frontal invitation to obliterate the culture of a people and foist on them a new regime of a particular marriage

²² CEDAW General Comment No 21, 'Equality in Marriage and Family Relations' UN CEDAWOR, 13 Sess UN Doc A/47/38 [1994] para 14.

culture alien to both their culture and religion especially Islamic religion.

The position of CEDAW on States Parties to adopt measures towards accelerating equality of rights of men and women in marital relationship was further amplified by its General Comment No 25²³ on Temporary Special Measures which stated thus:

The position will not be improved as long as the underlying causes of discrimination against women, and their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.²⁴

It has been argued strenuously that where States Parties legally encourage, condone, or simply ignore unequal familial practice of polygamy, they perpetuate male paradigms of power which results in women's de facto and de jure inequality.²⁵ With respect, the blanket assertion of inequality in marriage between men and women incubated in polygamous marriage by the Canadian Research Report is one-sided and tainted with prejudice largely influenced by the socio-cultural background and morality of the promoters of the said Report. The advocacy that States Parties adopt legislative and policy measures to jettison the 'historically determined male paradigms of power and life patterns' been advanced under Article 4(1) of CEDAW and complimented by General Comment No 25 respectively in customary marriages usually associated with, in most cases, by polygamous union which CEDAW rightly recognized to be 'historical' is indeed illusory and unworkable in African traditional societies such as Nigeria where

culture and tradition inclusive of religion defines and structures the roles and obligations of men and women in family and marriage.

Although civilization and human rights intrusion have melted down the strict application of the so-called 'male paradigms of power and life patterns' in customary marriages, the social construct still recognizes and places the men as the 'first among equals' in marriage with determined roles, obligations and powers. For instance, in traditional African societies such as Nigeria especially among the Igbo ethnic group, family issues like dowry payments and receipts, performance of burial rites, palm fruits harvesting, palm wine tapping from raffia palms, digging of grave for burials, et cetera are factored within the historically determined men's roles to the exclusion of women. And in a convivial marriage, not with standing its form, men do not exercise their 'powers' or authorities in isolation to the level of confining women to 'inferiority' status. Polygamous marriages within the African traditional societies witnessed much harmony and peace due to mutuality and conviviality among spouses that collaborated with and supported each other with minimum rate of divorce unlike what is witnessed in monogamous marriages in the Western world.

Notwithstanding the backlash and condemnation of polygamy, it is rather instructive that CEDAW has, in what may be considered as a volte face, advocated for a legal framework by States Parties to adopt measures for the registration of all marriages whether conducted under civil or customary law, in order to 'ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children'.²⁶ It is rather intriguing that while CEDAW on one breath rightly advocates for registration of polygamous marriages by State Parties under their national legislations, in another breath it canvasses for prohibition of polygamy and bigamy.

²³ CEDAW General Comment No 25, Article 4 para 1 of the Convention (Temporary Special Measures), 30 Sess UN Doc HRI/GEN/1/Rev 7 [2004] 282.

²⁴ Ibid para 10.

²⁵ 'Research Report: Polygamy and Canada's Obligation under International Human Rights Law' [September 2006] in <<https://www.justice.gc.ca>> accessed 10 May 2022.

²⁶ General Comment No 21 (n 20) para 39.

The conjugated position of CEDAW's advocacy for registration of polygamous marriages and subsequent call for its prohibition by State Parties is rather a policy summersault and double speak. The deliberate lumping together of 'bigamy' and 'polygamy' by CEDAW for prohibition by State Parties stemmed from CEDAW's idolization of monogamy under civil law and its demonization of customary marriages that supports polygamy.

It is instructive to observe that both the United Nations Human Rights Committee [UNHRC]²⁷ and CEDAW²⁸ respectively have isolated and profiled polygamous marriages as discriminatory against women and recommended their prohibition as the two human rights treaty bodies opine that the practice of polygamy violates Article 3²⁹ of the International Covenant on Civil and Political Rights [ICCPR], guaranteeing equal rights for women and men, violates a woman's right to equality in marriage, and has severe financial effects on her and her children. The position of UNHRC and CEDAW respectively on polygamy stemmed from their extended interpretation of the provisions of Article 3 of ICCPR³⁰ and not contextual. However, CEDAW in its General Recommendation No 29 has consistently maintained its goal of abolishing polygamy and categorically stated that: '[w]ith regards to women in existing polygamous marriages, States Parties should take the necessary measures to ensure the protection of their economic rights'.³¹

There is no empirical evidence that suggests or affirms that the protection of rights of women and children are absent in polygamous marriages and only present in monogamous marriages. The

growing body of international treaty³² on the rights of the child domesticated by various national jurisdictions should allay any fear on the protection of rights of children born in civil or customary marriages. The international treaty on the rights of the child has been ratified in several African jurisdictions including Nigeria³³ where polygamous marriages are legal. For women, there are adequate legal framework in domestic legislations³⁴ in Nigerian jurisdiction that secures and protects the right of married women over their properties and inheritance in marriage whether contracted under civil, customary or Islamic marriage.³⁵

In Nigerian jurisdiction the rights of children [males and females] including their inheritance are secured under customary law where polygamy is largely celebrated. The Nigerian jurisprudence has continued to promote and advance inheritance rights of female children where such is denied by local customs and have persistently nullified such custom that discriminates against female children's inheritance rights³⁶ as been incongruous and inconsistent with non-discriminatory rights provision of the Constitution.³⁷ In *Mojekwu v Mojekwu*³⁸ the Nigerian Court of Appeal went further to declare any rule of custom that discriminates against women inheritance rights as repugnant to natural justice, equity and good conscience. The Court declared with an air of finality thus:

We need not travel all the way to Beijing to know that some of our customs including the Nnewi Oli-Ekpe customs relied on by the

²⁷ 'United Nations Human Rights Report 2020' in <<https://www2.ohchr.org>> accessed 24 May 2022.

²⁸ General Comment (n 20) para 14.

²⁹ It provides thus: 'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.'

³⁰ Which provides thus: 'The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.'

³¹ CEDAW/C/GC/29, 30 October 2013.

³² United Nations Convention on the Rights of the Child adopted by the Forty Fourth Session of the United Nations General Assembly, 20 November 1989.

³³ Instrument of Ratification of the United Nations Convention on the Rights of the Child issued on 21 March 1991; Child's Right Act 2005, Federal Republic of Nigeria domesticated by various States of Nigeria.

³⁴ Married Women's Property Law, cap 26, Laws of Abia State, Nigeria similar to other States laws.

³⁵ Ibid s 2(1).

³⁶ *Gladys Ada Ukeje v Lois Chituru Ukeje* [2001] 27 WRN 142; *Bridget Motoh v Emmanuel Motoh* [2011] 42 WRN 124 [183].

³⁷ Constitution of the Federal Republic of Nigeria 1999 (as altered), s 42.

³⁸ [1997] 7 NWLR (pt 512) 283.

appellants are not consistent with our civilized world in which we all live totally including the appellants... Accordingly, a custom or customary law that 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

Thus, with respect to inheritance rights of married women and children, Nigerian jurisprudence has a body of domestic statutes that protects property rights of women whether in civil, customary or Islamic marriages.

Although religions that sanction and practice polygamy is not the focus of this study, it is pertinent to observe that even in faith-based polygamous marriages, inheritance rights of married women and female children are recognized and protected. For instance, in Islamic religion, The Holy Qur'an stated thus: 'For men there is a share from what their parents and close relatives leave, and for women there is a share from what their parents and close relatives leave, be it little or considerable; a definite share'.⁴⁰The Islamic injunction on equality of rights of inheritance for men and women was judicially sanctioned by the Nigerian Court of Appeal [Jos Division] in the case of *Bako Damisa v Habiba Muhammad Bangani*⁴¹ where the Court observed with sobriety that: 'It is clear without doubt that in Islam, men and women have equivalent rights, including but not limited to working, acquiring wealth, possession of property and the concept of inheritance'.⁴²

Under Christian religion that theologically sanctioned monogamous marriage,⁴³many of its adherents practice polygamy essentially based on doctrinal teachings of some Christian-based faiths and their culture, the inheritance rights of women

like men also receive approval and protection.⁴⁴ Thus, the veiled stigmatization of polygamy on the basis of denial of inheritance rights of women and children is borne out of misconception and patently false.

The international advocacy for gender equality in the enjoyment of marital rights has been deployed to profile polygamy as an aberration and its practice a violation of human rights of women. However, African jurisprudence on polygamous marriage adopted what could be described as a liberal and constructive engagement attitude towards polygamy. While recognizing the imperative of all international human rights instruments⁴⁵ that recognized the rights of women and the affirmative action on non-discrimination principle, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [The Protocol]⁴⁶ on marriage adopted an inclusive attitude to both monogamous and polygamous marriages for recognition and protection.

Although the African jurisprudence recommended monogamous marriage as a preferred form of marriage, it nonetheless advocated for a legal framework and policy construction that will advance the promotion and protection of rights of women in marriage including polygamous marriages. A broad outline of the African jurisprudence on marriage is provided in Article 6 of The Protocol thus:

Article 6:

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- a. No marriage shall take place without free and full consent of both parties;

⁴⁴ Ibid Book of Numbers 27: 1-8.

⁴⁵ The UDHR (n 8); ICCPR (n 9); CEDAW (n 15); International Covenant on Economic, Social and Cultural Rights [ICESCR] adopted by the General Assembly Resolution 2200A (XX1) 16 December 1966, et cetera in the Preamble to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003, para 5.

⁴⁶ Ibid.

³⁹ Ibid [305].

⁴⁰ *Surah Nosa 4:7*.

⁴¹ [2021] 43 WRN 166;

⁴² Ibid [178].

⁴³ The Holy Bible (n 19) Book of Genesis 2: 18-25; Book of Matthew 19: 3-6.

- b. The minimum age of marriage for women shall be 18 years;
- c. Monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including polygamous marital relationships are promoted and protected;
- d. Every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized;
- e. The husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f. A married woman shall have the right to retrain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g. woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h. A woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i. A woman and man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j. During her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Thus, in contrast with the international human rights jurisprudence on polygyny, the African human rights jurisprudence on the subject did not profile polygamous marriage as a violation of marital gender equality rights of women and never advocated for its prohibition. The African jurisprudence sees the two forms of marriage structure namely, monogamy and polygamy respectively as deserving of promotion and protection. The recommendation of monogamy as a preferred marriage structure by African human rights law is suggestive and it creates a room for individual autonomy. The attitude of African human rights jurisprudence on polygyny is largely influenced by African historical and traditional values and civilization which aggregates and defines African concept of human and peoples'

rights.⁴⁷It is settled that polygamous marriages characterizes African culture and tradition as a recognized form of marriage under customary law. And being a social construct, the African charter of human rights regime imposes an obligation on States Parties to ensure 'the promotion and protection of morals and traditional values recognized by the community'.⁴⁸

An interrogation of the two human rights regime of international human rights and African version respectively on polygyny under focus show a substantial agreement on issues of non-discrimination of women, registration of marriages, property rights of women and gender equality rights, et cetera. The point of divergence between the two human rights regime is on policy attitude towards polygamous marriage. The African human rights jurisprudence on polygyny is more progressive, dynamic, tolerable, accommodating, liberal and democratic than the hostile position adopted by international human rights jurisprudence.

The African jurisprudence also advocates for registration of customary marriages to secure the rights of women and children to allay fears of inequality and discrimination of women in harmony with the international human rights law and practice. It is gratifying to note that several jurisdictions in Africa have enacted robust legislations⁴⁹regulating the practice of polygamy which covers broad areas like registration, proprietary rights, inheritance, dissolution, alimony and others. However, in Nigerian jurisdiction, there is no uniform national legislation for the registration of customary marriages and all other matters connected therewith as tenable in some other African jurisdictions. What is obtainable is a localized pieces of legislations⁵⁰ that, in most cases, have

⁴⁷ African Charter of Human and Peoples' Rights [ACHPR] 1981, Preamble paras 4 and 10.

⁴⁸ Ibid art XV11(3).

⁴⁹ The Registration of Customary Marriage and Divorce Act 2007, Sierra Leone; Registration of Customary Marriages Act [RCMA] 120 of 1998, South Africa; The Customary Marriages Act 14 of 2001, Zimbabwe.

⁵⁰ Native Authority [Declaration of Tiv Native Law and Custom] Order 1955; The Registration of Marriages Adoptive

become of great antiquity which do not accord with the modern realities. It is hoped that the Nigerian jurisdiction will adopt a unified legal framework as obtainable in other African jurisdictions with necessary modifications on registration of customary marriages in harmony with international human rights jurisprudence.

The practice of polygamy in African societies is not of recent origin. It is synonymous with African history and culture. A body of scholarship on polygamous marriage in African societies has been developed to account for reasons for the practice. Although, not the focus of this work, it is pertinent to highlight, albeit briefly, some of the factors that induces the practice of polygamy as factored in some research findings to show its normative assertion and the existential threat the practice of polygamy now faces in the storm of international human rights law.

It has been identified that the desire for numerous sex partners to fulfil biological need of husbands and curb infidelity especially during the post-partum, lactating and menstrual sexual taboos prevalent in some cultures; need to cater for the excess or surplus women that may remain unmarried; economic advantage of a larger family in agricultural enterprise since traditional African societies are largely agrarian and pastoral as polygamy affords greater labour force through more wives and children; the window of opportunity for the welfare of widows and their children through widow inheritance within the family lineage; opportunity to marry different shapes and varieties of women to curb infidelity; the status symbol polygamous family confers on the men as value system for ranking, conferment of chieftaincy titles and other famous titles [like the *Eze Ji*⁵¹ in Igbo societies of Nigeria for example] are measured on the strength of larger family size and wealth; social security larger families provides for their members.⁵² In some

By-Laws Orders 1956 which applies to the Western States of Nigeria.

⁵¹ Meaning 'King of Yam,' a famous and influential title associated with a man with large-scale barns of yams.

⁵² Elizabeth RemilekunOlasore, "The Extent of Polygamy in Africa, Any Role for the Information Professionals in

cases, multiple wives are taken as a rescue measure where there is a confirmed infertility of the first wife, or where the first marriage produced female children only without a male child that ordinarily will continue the family lineage and inheritance rights. In traditional African societies, male child is considered important as female children will be married off, leaving such non-male child family in extinction. That explains why in Igbo society of Nigeria, such names like *Ahamefula* [let my name not end] and *Nwokedi* [A male child remains] are giving to a male child to underscore the importance of a father leaving a descendant that will continue with the family lineage after his death.

Although these and more reasons for the practice of polygamy may not appeal to the reason and understanding of an urbanized, sophisticated and educated person, and notwithstanding its inherent flaws as projected by international human rights advocates, the crystal truth remains that polygamy is an acceptable norm in many traditional societies particularly of African descent. The obvious imperfections that underlined polygamous marriages as observed by international human rights conventions and advocates are not peculiar but cut across every human institution inclusive of monogamous marriages.

III. MONOGAMY AND WESTERN IDEOLOGY

The glorification and edification of monogamy as an ideal marriage under the international human rights jurisprudence is largely influenced by Western ideology which promotes and advocates for monogamy and proscribes polygamy with penal sanctions. Thus, monogamy is anchored on Western tradition and values. The idea of international human rights law and its principles were substantially formulated based on Western ideological thinking which incorporated Western values. Some of these Western values and traditions like the issue of marital rights as demonstrated in the present study results in a

Curbing Further Spread?' [2016] (6) (6) *Information and Technology Management* 8-9.

collision course with African ideological thought. Further demonstration of this clash of values is on the issue of expansion of right to marry and found a family to include homosexual marriage by Western idea of human rights which does not resonate well with African human rights jurisprudence.

To lend credence to the fact that monogamy is a product of Western tradition, values and civilization, the Supreme Court of the United States as far back as 1885 before 'before the advent of the Universal Declaration of Human Rights [UDHR] in 1948 judicially noted this fact in the case of *Murphy v Ramsey*⁵³ where the apex Court, while justifying the power of the Congress in legislating against bigamy and polygamy, philosophically observed thus:

For, certainly, no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate states of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. And to this end, no means are more directly and immediately suitable than those provided by this Act, which endeavours to withdraw all political influence from those who are practically hostile to its attainment.⁵⁴

The Supreme Court of the United States made this unequivocal judicial pronouncement in the wake of challenge to the constitutionality and validity of United States' Anti-Polygamy Act⁵⁵ which, inter-alia, disenfranchised polygamists or bigamists and banned them from holding any public office or public trust, honour, or

emolument within the United States territory.⁵⁶ Thus, it is without disputation that the underlying philosophy behind monogamous marriage in United States is anchored on their morality and civilization. It then becomes abundantly clear that history, tradition and morality of a people are intrinsic to their choice of form of marriage.

At the level of European jurisdiction, it has been equally judicially observed that the basis for the prohibition of polygamy was for the protection of European morals and culture. This declaration was highlighted by the European Court of Human Rights [ECtHR] in the case of *RB v United Kingdom*⁵⁷ where one of the issues submitted to the Court for determination was whether restriction placed on polygamy was not in conflict with the right to respect for private and family life in Article 8 of the European Convention on Human Rights [ECHR]. It was a case based on an application by a Syrian polygamist national with permanent residence in Sweden to the authorities to grant his two wives entry and residence visa under the European Union Directive on Family Reunification which was rejected on the basis that polygamy offends the values and principles of the Member-States, and that the claim for right to respect to private and family life in the present case did not outweigh the legitimate consideration of an immigration policy which rejects polygamy and was designed to maintain the United Kingdom's cultural identity, and that the interference with the applicant's right to respect for family life was in accordance with the law and justified as being necessary in a democratic society for the protection of morals and the rights and freedoms of others.

Thus, it seems convenient for the Western and European jurisdictions to proscribe polygamy with stiff penal sanctions on the basis of their shared cultural and traditional or moral values but would not accept the same cultural and traditional values to apply to African and even Asian jurisdictions in respect of polygamy that recognize it as a norm. Culture is relative and the idea of marital universal ethics which the present

⁵³ 114 US 15 [1885].

⁵⁴ Ibid [45].

⁵⁵ Edmunds Anti-Polygamy Act (n 3).

⁵⁶ Ibid sec 8.

⁵⁷ Application No 1962/92.

conversation on international human rights attitude to polygamy largely influenced by Western ethics is promoting and advocating seems an aberration and unworkable to non-Westerners. This present study is not intended to shield polygamy from criticisms, but disagrees with the international profiling and stigmatization of polygamy, a marriage practice in harmony with African civilization, as anachronistic and an aberration to human rights of women.

IV. POLYGAMISTS AND HUMAN RIGHTS

The current international human rights jurisprudence on polygamy which calls for its proscription seems to gloss over the potential threats and violations of human rights concerns of polygamists located within the docket of individual autonomy of choice of marriage partners which underlined and defined the universal human rights of privacy⁵⁸, liberty⁵⁹ and right to marry and found a family.⁶⁰ While the international human rights jurisprudence on polygamy sees polygamy as a violation of rights of women on the basis of equality and discrimination, yet it fails or refuses to recognize the human rights of polygamists to freely choose and determine the number of their marriage partners under the right to respect to private and family implicit in the right to individual liberty and right to marry and found a family. Thus, these private civil rights claim available to polygamists cannot be denied without justification under the framework of State legitimate interest.

The international bill of rights instruments has advanced and prescribed clear basis for exercise of the right to marry and found a family essentially based on 'equality of marital rights during marriage and its dissolution and with full consent of the intending partners'.⁶¹ Thus, men and women of marriageable age who elect freely to enter into a polygamous union as spouses

either under the springboard of customary law or religious platform and been conscious of its inherent contradictions are within their civil rights claims under international law. To advance and promote for prohibition of polygamous marriage certainly will amount to clear intrusion into individual autonomy of privacy rights of family and marital relationships of polygamists which are indeed private rights claims.

In advanced democracies with a notch for fundamental rights and freedoms like the United States jurisdiction, her jurisprudence applies the Constitution⁶² to protect rights of privacy and individual autonomy especially in the areas of marriage; procreation, abortion, private consensual homosexual sexual activity, and medical treatment.⁶³ Thus, right to privacy has been extended to include marital relationships.⁶⁴ The United States jurisprudence has enlarged the space of protection of privacy and family rights of an individual devoid of State unnecessary intrusion into matters so fundamentally affecting a person's private decisions.⁶⁵ It has been audaciously argued that the right to privacy is closely linked with the integrity and sanctity of the family.⁶⁶ Thus, there is a body of jurisprudence in the United States that has expanded the scope and space of rights of privacy and family to a wide spectrum such as the use and choice of contraceptives,⁶⁷ right of parents to choose the school and training of their children,⁶⁸ decisions on child bearing,⁶⁹ homosexual activity of consenting adults in private⁷⁰ and homosexual marriage.⁷¹

⁶² Constitution of the United States 1787, Fourteenth Amendment 1862.

⁶³ <<https://www.justicia.com>> accessed 27 July 2022.

⁶⁴ *Griswold v Connecticut*, 381 US 479, 484 - 486 [1965].

⁶⁵ *Eisenstaedt v Baird* 405 US 438 [1972].

⁶⁶ Laura W. Morgan and Lewis B Reich, 'The Individual's Right of Privacy in a Marriage' [2010] (23) *Journal of the American Academy of Matrimonial Lawyers* 112.

⁶⁷ *Eisenstaedt* (n 65).

⁶⁸ *Meyer v Nebraska* 262 US 390 [1923]; *Pierce v Society of Sisters* 268 US 510 [1925].

⁶⁹ *Carey v Population Services International* 431 US 678 [1977]; *Planned Parenthood v Danforth* 428 US 52 [1976].

⁷⁰ *Lawrence v Texas* 539 US 558, 575 [2003].

⁷¹ *Obergefell v Hodges*, *Director Ohio Department of Health* 10 USC [2015].

⁵⁸ UDHR (n 8) art 12; ICCPR (n 9) art 17.

⁵⁹ UDHR (n 8) art 3; ICCPR (n 9) art 9.

⁶⁰ UDHR (n 8) art 16(1); ICCPR (n 9) art 23(2).

⁶¹ UDHR (n 8) art 16(1) and (2); ICCPR (n 9) art 23(2) and (3).

Curiously, why it is convenient for the United States' jurisprudence to enlarge the space of rights of privacy and family to such thematic areas of private rights, it has continued to prohibit polygamous marriage on the basis of her morality and civilization which position it considered obtuse to advocates of polygamy who also rely on their own morality and civilization.

Thus, if dynamism of fundamental rights and freedoms is properly situated, the choice and number of marriage partners under customary marriage should be a matter better reserved for individual autonomy in free exercise of marital and family rights.

Thus, the decision whether to allow or prohibit polygamous marriage should be left for each jurisdiction to decide based on its history, tradition, civilization and morals in exercise of its legitimate claim of margin of appreciation under international law without a stereotype blanket prohibition as is the current position under the international human rights jurisprudence.

V. CONSEQUENCES OF PROHIBITION OF POLYGAMY

The international human rights jurisprudence for proscription of polygamous marriage is not without its inherent implications with legal, social and psychological dimensions. It is rather intriguing that the current international human rights position on polygamy only focused on its inherent contradictions in the face of human rights of women without addressing the challenges such proscription will inevitable throw up. One of the implications of such position is the forceful and unintended divorce of otherwise normal and peaceful customary marriages. Where a man with multiple wives is pressurized to do away with other wives save one, it will trigger off avalanche of divorce cases as the man, in such situation, will elect each of the wives to retain and do away with others through the process of unbundling of excess wives.

Second, apart from high rate of divorce cases, such position will adversely affect the women psychologically, emotionally and work hardship

on the women the international human rights position seeks to protect. Indeed, prohibition of polygamy will impact negatively on women in existing polygamous marriages leading to dislocation and destabilization of several families. Women who had immensely and tremendously labored and contributed materially and financially in building their homes may lose their joy, peace, loss of marital identity and ostensibly become immune to psychologically-induced diseases like trauma and hypertension.

Third, women adversely impacted by the unbundling of wives syndrome from existing polygamous marriages that were not registered or where registration of customary marriages are not provided for in a legal framework, may simply lose their inheritance rights in the family estate. Thus, in the absence of any legal prescription for inheritance rights of women on dissolution of customary marriages, the issue of inheritance for such women becomes subject to customary law stipulations which are usually disproportionate to women in terms of estate distribution. The plight of women in such unregistered customary unions at dissolution was highlighted in Zimbabwean jurisdiction as 'a woman in only entitled to what is known as *mawoko* property which does not amount to much but a stove, utensils and linen, which causes grave injustice to women due to the modern day approach of marriages where women contribute financially to the acquisition of properties'.⁷² The Zimbabwean experience is similar to other traditional African societies with respect to the issue of inheritance rights of women on dissolution of customary marriages especially unregistered unions which are governed by relevant rules of customary law.

Fourth, implementation of the prohibition of polygamous marriages under the template of international human rights jurisprudence will certainly obliterate customary marriage practice under customary law and cause a marital and family dysfunctional society to the aborigines making reception of alien monogamous marriage

⁷² <<https://www.nnlawpractice.co.zw>> accessed 27 July, 2022; *Chawanda v Zimnat Insurance Co. Ltd* [1990] (2) ZLR 1435.

structure and practice obtrusive and an affront to their tradition and civilization.

Fifth, akin to that is the religious sentiment especially of Muslim faith which sees polygamy as permissible and any intrusion on its practice as non-Islamic and human right violation. Muslim women married under Islamic polygamous marriages are not elated at the idea of monogamous marriage structure advocated by CEDAW and other international human rights advocates. To them, such advocacy is academic and hypothetical as the mind-set of Muslim women are wired to their polygamous family structure anchored on their faith. Thus, such prohibition is a violation of the free exercise of right to freedom of religion which includes freedom to change religion or belief, and freedom, either alone or in community with others and in public or private, to manifest a person's religion or belief in teaching, practice, worship and observance.⁷³ Thus, multiple wives to a maximum of four is a religious practice of Muslims which accords with their religious freedom not susceptible to any intrusion or violation.

Sixth, full implementation of prohibition of polygamy will increase the population of women seeking marriage with its attendant social implications. There is already an army of unmarried women and to add to the number with other women to be unbundled in existing polygamous marriages will exacerbate the situation. With the phenomenal growth and maturity rate of women, the psychological burden of single status with societal stigma in traditional African societies will be unbearable.

In the light of the above, international advocacy for prohibition and criminalization of polygamy is misplaced. There is urgent need to adopt a paradigm shift from proscription and criminalization to robust legislative and policy reform to strengthen polygamous marriage institution in those jurisdictions that practice it for the achievement of the ultimate goal of protecting the welfare and interests of women and their children.

⁷³ UDHR (n 8) art 18; ICCPR (n 9) art 18.

Findings

This present study made the following findings:

1. That polygamy, been the thematic subject of study, is a form of marriage structure that is essentially based on customary marriage prevalent within the traditional African societies and is culture-oriented and promoted by Islamic faith.
2. That there is a current position taken by international human rights law and practice spearheaded by CEDAW and other human rights bodies, treaties and conventions that advocates for the proscription and criminalization of polygamy as a form of marriage and considered monogamy as an ideal marriage structure on the basis that polygamy violates the human rights of women with respect to equality and been discriminatory.
3. Also that CEDAW, while advocating for prohibition and criminalization of polygamy, calls for registration of existing polygamous marriages and protection of rights of women and children through a robust legal framework. The idea of registration of customary marriages has engaged the attention of several jurisdictions in Africa such as Sierra Leone, South Africa, Zimbabwe and others.
4. It was further identified in the study that polygamy pre-dated the international bill of rights instruments and that the African jurisprudence does not call for prohibition of polygamy or its stigmatization nor see it as a violation of human rights of women, but advocates for ways to strengthen it through a robust broad-based legal framework and policy measures under the template provided in its Article 16 of the Protocol on the Rights of Women in Africa.
5. The study further found out that the international advocacy for proscription and criminalization of polygamy for been a violation of human rights of women resonates with the Western ideology on polygamy which is considered offensive to Western morals and civilization, The Western negative ideological thinking and jurisprudence on polygamy

fueled the speculation that it actually influenced the position of international human rights law on the subject.

6. It was further found out in the study that there is no express stipulation in the international bill of rights instruments and their Protocols that profiled any form of marriage [whether monogamy or polygamy] for prohibition or adoration as an ideal marriage under the right to marry and found a family within the docket of UDHR and ICCPR respectively.
7. That while there are legitimate concerns as expressed in the international treaties on the perceived violations of human rights of women on equality and discrimination in a polygamous marriage, the study found out that such international mindset does not resonate well under a historically and traditionally structured customary polygamous marriage as the international advocacy for gender-neutral role and obligations in marriage is antithetic to customary law and even Christian theology.
8. In addition, the study found out that the international profiling of polygamous marriage for proscription and criminalization violates the human rights of polygamists in the areas of privacy or individual autonomy, free exercise of right of liberty and right to marry and found a family respectively by reason that such international attitude excludes or restricts the free exercise of men and women of full age their universal human rights to consensually enter into polygamous marriages.
9. The study also found out that attitude towards polygamy whether for proscription and criminalization or permissiveness or acceptability is located only in national legislations of State Parties and in harmony with the legitimate exercise of margin of appreciation under international law and practice.
10. That several reasons accounts for the practice of polygamy within the traditional African societies such as biological, demographic, social, economic, security, welfare of widows and orphaned children, barrenness of first

wife, quest for male-child syndrome, among others.

11. That under the rules of customary law, there are adequate customary rules and jurisprudence that secures the inheritance rights of women and children in several African jurisdictions.

RECOMMENDATIONS

In the light of the foregoing findings deduced from a critical review of the available literature and scholarship, the present study has come up with the following recommendations.

There is urgent need to have a paradigm shift in the current international human rights attitude towards polygamy by migrating from proscription and criminalization to acceptability and recognition for jurisdictions with permissive legal system borne out of their history and tradition in the exercise of their cultural rights. Indeed, jurisdictions should be allowed to enjoy their legitimate claim to margin of appreciation under international law in regard to marriage and family issues especially since there is no contextual and substantial prescriptive provision in the international bill of rights instruments on form of an ideal marriage to the exclusion of the other.

It is further recommended that jurisdictions that have permissive attitude towards polygamy by reason of their history and tradition should be encouraged to adopt robust legal framework and solid policy measures to strengthen the institution of polygamous marriage within the policy framework of Article 16 of CEDAW which is substantially in consonance with Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [The Protocol] respectively with a view to protecting the rights of women and children which crystallizes in the elimination of perceived fears of inequality and discrimination in marriage, during marriage and at its dissolution of women and their children that orchestrated the initial international hostility and stigmatization towards polygamous marriage institution.

VI. CONCLUSION

This study examined the international human rights jurisprudence that profiled polygamy as a marital practice that impugns on the rights of equality and non-discrimination of women and children in marriage with strong advocacy for its prohibition and criminalization, a claim that has polarized it with the African jurisprudence on polygamy. The international human rights negative and hostile attitude towards polygamy stemmed from an extended interpretation of Article 3 of ICCPR by CEDAW and other human rights bodies on equality of rights of men and women which interpretation cannot be said to resonate with or located in the clear and unambiguous substantive and contextual provisions for the right to marry and found a family under Article 16 of UDHR and Article 23 of ICCPR respectively.

Furthermore, in consideration of the existential threat to the historical and traditional customary marriage that characterizes polygamous union and the religious sensibilities of the Islamic faithful which strikes at the root of their social and religious identities respectively which the current international human rights law attitude poses coupled with the legitimate demand of margin of appreciation under international law which allows jurisdictions to adopt legal framework suitable to their history, tradition and morality on enactment of national laws, then there is an urgent need for paradigm shift in the current position of international human rights jurisprudence on polygamy from proscription and criminalization to acceptance and recognition for jurisdictions that tolerate it with adequate legal framework for the protection of rights of spouses and their children in harmony with the template of African human rights jurisprudence. Now is the time to adopt a paradigm shift by reviewing the international human rights attitude on polygamy and end the stigmatization and criminalization.