

# ISLAMIC LAW AND THE INTERNATIONAL PROTECTION OF WOMEN'S RIGHTS: THE EFFECT OF SHARI'A IN NIGERIA

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## INTRODUCTION

Amina Lawal is a thirty-one year old illiterate, unemployed mother of three children.<sup>1</sup> She has been married and divorced twice.<sup>2</sup> Amina was living in her father's house in Kurami, Nigeria, when a fellow villager reported that Amina's youngest daughter, Wasila was born out of wedlock.<sup>3</sup> At that point, Amina's life was forever changed.

The Islamic court charged Amina with adultery and she confessed, although having a daughter born more than nine

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1. David Finkel, *Adultery's Cost: Death by Stoning*, SEATTLE TIMES, Nov. 28, 2002.

2. *Id.*

3. Amnesty International UK, *Save Amina From Death by Stoning* [hereinafter Amnesty International UK], at <http://www.mertonai.org/amina/amina.asp> (last visited Mar. 21, 2004 and the hard copy is available in the Syracuse Journal of International Law and Commerce office).

months after divorcing was proof of her crime.<sup>4</sup> The man that Amina identified as Wasila's father, Yahaya Muhammad, denied the charge and swore on the Koran that he was innocent.<sup>5</sup> Muhammad escaped conviction because the prosecution could not produce four eyewitnesses to the fornication, the necessary burden of proof under Islamic law for a male.<sup>6</sup> Amina was not as fortunate.

On March 22, 2002, the Shari'a court at Bakori in Katsina State sentenced Amina to death by stoning for her act of adultery.<sup>7</sup> The court scheduled Amina's execution for spring 2004, when Wasila stopped breastfeeding.<sup>8</sup> Death by stoning involves the burying of the person to their neck in the ground and then continuous stoning to the head until death.<sup>9</sup> On August 19, 2002, an Islamic high court in Nigeria rejected Amina's appeal and instead upheld her sentence to death by stoning for having had sex out of wedlock.<sup>10</sup>

On January 23, 2003, the Shari'a court of appeals grand *khadi* (chief judge) refused to comment on her guilt or innocence.<sup>11</sup> However, the judge did state, "The best deterrent is the death sentence, for people to see what happens to a fornicator. They watch you be stoned to death. They wouldn't want it to happen to them."<sup>12</sup> The judge went on to say, "[t]his case is an ordinary case, as simple as drinking water."<sup>13</sup> Amina's case was adjourned for another two months after only ten minutes of deliberations.<sup>14</sup>

On September 25, 2003, the Shari'a Court of Appeal in Nigeria overturned Amina's conviction.<sup>15</sup> The court held the

4. Amnesty International UK, *supra* note 3; Finkel, *supra* note 1.

5. Finkel, *supra* note 1.

6. *Id.*

7. Bianca Jagger, *All Miss World contestants must quit now; only a complete boycott can bring Nigeria to its senses*, THE LONDON EVENING STANDARD, Nov. 29, 2002.

8. Finkel, *supra* note 1.

9. Amnesty International UK, *supra* note 3; Jeff Koinage, *Woman Sentenced to Stoning Freed*, CNN, Sept. 26, 2003 at [www.cnn.com/2003/WORLD/africa/09/25/nigeria.stoning/](http://www.cnn.com/2003/WORLD/africa/09/25/nigeria.stoning/) (last visited Apr. 15, 2003) [hereinafter *Woman Freed*].

10. Associated Press, *Court Upholds Stoning For Nigerian Mother*, N.Y. TIMES, Aug. 20, 2002 [hereinafter *AP, Ct. Upholds*].

11. Somini Sengupta, *As Stoning Case Proceeds, Nigeria Stands Trial*, N.Y. TIMES, Jan. 26, 2003.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Woman Freed*, *supra* note 9.

conviction invalid because Amina was pregnant when Shari'a was implemented in her province and other procedural errors.<sup>16</sup> In his opinion, Judge Ibrahim Mai-Unguwa found Shari'a to be interpreted as allowing up to five years for gestation, providing for the possibility that Amina's ex-husband of two years could have been Wasila's father.<sup>17</sup> Had the Court of Appeals affirmed her conviction and sentence to stoning, Amina would have had two additional appeals to Nigerian federal courts, which are not governed by Shari'a.<sup>18</sup>

Twelve Nigerian states have put Islamic Law (Shari'a) into practice since the implementation of civilian rule, which replaced military dictatorship in 1999.<sup>19</sup> Amina is the second woman to be convicted of having sex out of wedlock; the first was Safiya Hussiaini who had also been sentenced to death by stoning.<sup>20</sup> On March 26, 2002, a high court in Lagos, Nigeria acquitted Hussiaini due to lack of evidence based upon the admission by her ex-husband that he had fathered the child.<sup>21</sup>

This article follows Amina Lawal's story to illustrate the inability of international law to protect the rights of women. In just over three years, four people in northern Nigeria have been sentenced to death for adultery, and one convicted murderer was hanged.<sup>22</sup> In 2000, a teenager was publicly flogged for the crime of adultery after three men raped her.<sup>23</sup> If Amina's conviction had been upheld, she would have been the first to be executed for adultery since the implementation of Shari'a in Nigeria.<sup>24</sup> Her death would have likely added fuel to an already incendiary civil conflict between the northern Shari'a states and the southern democratic states.<sup>25</sup> In order to understand how Shari'a came to power in Nigeria, it is important to understand the history of

16. Associated Press, *Nigerian Woman Avoids Stoning Death*, U.S.A. Today, Sept. 25, 2003, available at [www.usatoday.com/news/world/2003-09-25-niger-stoning\\_x.htm](http://www.usatoday.com/news/world/2003-09-25-niger-stoning_x.htm) (last visited Apr. 15, 2004) [hereinafter AP, *Woman Avoids*].

17. *Id.*

18. *Woman Freed*, *supra* note 9.

19. AP, *Ct. Upholds*, *supra* note 10.

20. Associated Press, *Nigerian Woman Condemned to Death by Stoning is Acquitted*, N.Y. TIMES, Mar. 26, 2002. [hereinafter AP, *Nigerian Woman*].

21. *Id.*

22. Finkel, *supra* note 1.

23. Natasha Walter, *Beauty and the Beasts*, NEW ZEALAND HERALD, Nov. 8, 2002.

24. Sengupta, *supra* note 11.

25. *Id.*

political unrest that has plagued the country since decolonialization.

Part I of this article develops Nigeria's history of political unrest and deeply divided Muslim and Christian population resulting in the recent emergence of religious governance by Shari'a Law. Part II describes current international law as well as Nigeria's international commitments under three specific treaties. The three treaties discussed are the Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW"), the Optional Protocol to CEDAW ("The Protocol"), and the Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"). Part III details how Shari'a Law conflicts with Nigeria's commitments under the treaties and what enforcement mechanisms have failed to allow for such insubordination.

Finally, Part IV of this article sets forth proposals for the future of international law. These proposals include how the international community can alter treaties and the treaty reservation process to better effectuate the goals they set forth. These suggestions will be applied to Amina Lawal to demonstrate how such changes could have saved her from her sentenced execution.

## I. NIGERIA'S POLITICAL HISTORY

On October 1, 1960, Nigeria became an independent country by an act of the British Parliament.<sup>26</sup> Britain had controlled Nigeria since its colonization of the protectorate in 1861.<sup>27</sup> As a result of the colonization, the official language is English.<sup>28</sup> Since decolonialization, Nigeria has experienced many systems of government.<sup>29</sup> Following independence, a democratic

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26. *The History of Nigeria* accessed through the Library of Congress, available at [http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+ng0033\)](http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+ng0033)) (last visited Apr. 10, 2004)[hereinafter *History*].

27. Associated Press, *Timeline of Nigerian Government*, BBC, January 10, 2001.[hereinafter AP, *Timeline*]

28. *History*, *supra* note 26.

29. See generally, Ema Orji, *Issues on Ethnicity and Governance in Nigeria: A Universal Human Rights Perspective*, 25 *FORDHAM INT'L L. J.* 431 (2001) (discussing how Nigeria's history of political unrest has influenced its present views on human rights); See also, Okechukwu Oko, *Subverting the Scourge of Corruption in Nigeria: A Reform Prospectus*, 34 *N.Y.U. J. INT'L L. & POL.* 397 (2002) (discussing the history of political corruption within the Nigerian government).

parliamentary system with a prime minister and a governor general was established.<sup>30</sup> The governor general was much like the British monarch and performed essentially ceremonial tasks, whereas the prime minister was charged with leading state affairs.<sup>31</sup> The parliament was composed of a House of Representatives, with 312 members, and a Senate, with 44 members.<sup>32</sup> The public elected all members of the House and all Senators were chosen by regional legislatures.<sup>33</sup>

There were two main parties that appeared during the first few years following independence: the National Council of Nigeria and the Cameroons ("NCNC") and the Northern Peoples' Congress ("NPC").<sup>34</sup> These conflicting parties were heavily represented in the country's first election in 1964.<sup>35</sup> Conflicts arose because the three major ethnic tribes, The Hausa in the north, The Ibo in the east, and the Yoruba in the south and west refused to work together.<sup>36</sup> Civil wars in the east led to a military administration taking over in 1966.<sup>37</sup> That same year the constitution was amended to remove the supremacy of the constitution as the law of the land.<sup>38</sup> This provision ended the federal court's ability to entertain questions of constitutional human rights violations by subsequent legislation.<sup>39</sup>

Current Nigerian President, Olusengun Obasanjo, military dictator from 1976 to 1979, was the only dictator able to return the country to civilian control.<sup>40</sup> The military retained power in Nigeria despite multiple coups and assassination of leaders.<sup>41</sup> In 1995, the European Union imposed a three-year sanction against Nigeria for its gross human rights violations.<sup>42</sup> In 1999,

30. *History*, *supra* note 26.

31. *Id.*

32. *Id.*

33. *Id.*

34. O. Igho Natufe, Ph.D., *Midwest State and the Future of Nigerian Federalism*, available at <http://www.dawodu.net/igho.htm> (last visited Apr. 15, 2004).

35. *Id.*

36. Joel E. Starr, "What Do You Have For Me Today?" *Observing the 1999 Nigerian Presidential Election*, 35 STAN. J. INT'L L. 389, 390-91 (1999).

37. *History*, *supra* note 26.

38. Christian N. Okeke, *International Law in the Nigerian Legal System*, 27 CAL. W. INT'L L.J. 311, 340 (1997).

39. *Id.*

40. Starr, *supra* note 36, at 391.

41. *History*, *supra* note 26.

42. AP, *Timeline*, *supra* note 27.

democratic elections in parliament and the presidency brought the election of Obasanjo and, at the same time, Islamic law was reintroduced in the northern Nigerian states.<sup>43</sup> Although the two events occurred within the same year, Obasanjo did not facilitate the introduction of Shari'a law, it was a result of the Muslim dominance in the northern states.<sup>44</sup> At the time of the election, Nigeria had a fifty percent literacy rate and, of the 107 million residents, sixty percent were registered voters.<sup>45</sup> However, only fifty percent of the registered voters turned out to vote in the 1999 election.<sup>46</sup>

The Nigerian Constitution was redrafted in 1999.<sup>47</sup> There are two sections of the Constitution that created tension surrounding the implementation of Shari'a. First, the Constitution does not allow for the death penalty or torture:

Every person has a right to life, and no one shall be deprived intentionally of his life. . . every individual is entitled to respect for the dignity of his person, and accordingly. . . no person shall be subject to torture or to inhuman or degrading treatment.<sup>48</sup>

Therefore, the punishment of execution that Shari'a proscribes is unconstitutional.

Second, the Constitution guarantees citizens the right to freely practice their chosen religion as proscribed by their holy books:

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>49</sup>

The holy book of Islam, the Koran, directs its followers on how to behave and what the repercussions are for

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43. AP, *Timeline*, *supra* note 27.

44. *Id.*

45. Starr, *supra* note 36, at 390–91.

46. *Id.* at 397.

47. *See generally*, Jennifer Tyus, *Going too Far: Extending Shari'a Law in Nigeria from Personal to Public Law*, 3 WASH. U. GLOBAL STUD. L. REV. 199 (2004) (comparing the Constitution of Nigeria to that of other predominantly Muslim states).

48. NIG. CONST. ch. IV, §§ 33(1), 34(1), *available at* <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (last visited Apr. 15, 2004) [hereinafter Constitution].

49. *Id.* at §38(1).

noncompliance.<sup>50</sup>

Furthermore, the Islamic courts are recognized by the Constitution in chapter VII, the Judicature.<sup>51</sup> The scope of the Islamic court's power is enumerated and includes topics such as marriage, guardianship of the infirmed, and succession of property.<sup>52</sup> The final appeal for all cases heard by the Islamic courts resides in the highest court for Nigeria, the Federal High Court.<sup>53</sup> The complicated web of Islamic and federal courts may become the focal point for confrontation between religion and democratic rule.

Nigerian President Obasanjo received considerable pressure from the international community against the use of Shari'a in the twelve northern states.<sup>54</sup> This pressure stems from the fact that civil conflict has taken the lives of more than 10,000 Nigerians since Obasanjo's election in 1999.<sup>55</sup> The government has reluctantly declared its official condemnation for the use of harsh punishments under Shari'a, but has yet to take affirmative action to prevent their application.<sup>56</sup> While the government sat idle, the opposition to Shari'a has sparked violence throughout the country resulting in over two thousand deaths in two years.<sup>57</sup> Supporters of Shari'a allege a violation of their religious rights and claim that non-Muslims have a separate court system and, therefore, no right to interfere.<sup>58</sup> Opponents to Shari'a point to the egregious human rights violations and constitutional violations, combined with the

50. See generally, Karima Benrioune *As-Salmu' Alaykum? Humanitarian Law in Islamic Jurisprudence* 15 MICH. J. INT'L L. 605 (1994) (discussing the role of Islamic Law in principles of contemporary humanitarian law); Edna Boyle-Lewicki, *Need World's Collide: The Hadad Crimes of Islamic Law & International Human Rights*, 13 N.Y. INT'L L. REV. 43 (2000) (illustrating how crime and punishment under Islamic law compare with international human rights law); Joelle Entelis, *International Human Right: Islam's Friend or Foe?*, 20 FORDHAM INT'L L. J. 1251 (1997) (discussing international human rights for women as illustrated by the enforcement of Islamic law in Algeria).

51. See generally, NIG. CONST., *supra* note 49, ch. VII.

52. *Id.* at §262(2).

53. *Id.*

54. Walter, *supra* note 23.

55. Associated Press, *Nigerian Oil Crisis Worsens*, CNN.COM, Mar. 23, 2003, available at <http://www.cnn.com/2003/WORLD/africa/03/23/nigeria.oilnew/index.html> (last visited Apr. 15, 2004). [hereinafter AP, *Oil Crises*].

56. Walter, *supra* note 23.

57. AP, *Ct. Upholds*, *supra* note 10.

58. Associated Press, *Nigeria Shari'a Architect Defends Law*, BBC NEWS, Mar. 21, 2002.

lack of government response as justification for intervention.<sup>59</sup>

In November 2002, the clash between Muslim and Christian states erupted in the capital city of Abuja as the Miss World Pageant was scheduled to take place there in December.<sup>60</sup> Contestants boycotted the event as a means of drawing attention to the treatment of women in the Shari'a states.<sup>61</sup> The pageant became a world stage for international protest for human rights.<sup>62</sup> Over a hundred people were killed in riots that erupted after a newspaper suggested the Prophet Mohammed would have approved of the Miss World Pageant and likely chosen a wife from among the contestants.<sup>63</sup> Mobs of protestors looted shops, smashed windows, and burned churches and mosques, while stabbing, bludgeoning, and burning bystanders.<sup>64</sup> As a result of the violent reaction by the northern Shari'a states and the inability of the government to control the situation, the organizers of the pageant relocated to London.<sup>65</sup>

Consequently, the Miss World Pageant highlighted Amina Lawal's story and the general disparate treatment of women under Shari'a law into an international arena. Amnesty International launched an international campaign opposing Shari'a and condemning the harsh punishments as "gender persecution" and "discriminatory punishment that deliberately flouts the Nigerian constitution."<sup>66</sup> Human rights groups worldwide allege that the imposition of Shari'a violates Nigeria's commitments under international law, and, therefore, the international community has a right and duty to intervene.<sup>67</sup>

## II. CURRENT INTERNATIONAL HUMAN RIGHTS LAW

International human rights law began with the establishment

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59. Ema Orji, *Issues on Ethnicity and Governance in Nigeria: A Universal Human Rights Perspective*, 25 *FORDHAM INT'L L.J.* 431 (2001).

60. Walter, *supra* note 23.

61. *Id.*

62. *Id.*

63. Associated Press, *Miss World Leaves Nigeria*, CNN, Nov. 22, 2002. available at <http://www.cnn.com/2002/WORLD/africa/11/22/nigeria.missworld/> (last visited Apr. 15, 2004) [hereinafter AP, *Miss World Leaves Nigeria*].

64. *Id.*

65. *Id.*

66. AP, *Ct. Upholds*, *supra* note 10.

67. See generally *Women Freed*, *supra* note 9.

of the United Nations on October 24, 1945.<sup>68</sup> On that date, representatives from fifty countries came together in San Francisco to develop the Charter of the United Nations.<sup>69</sup> The purpose set forth in the United Nations Charter is to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.<sup>70</sup> The drafters of the U.N. Charter clearly stated that the provisions of the Charter apply to all states, even non-member states, as far as may be necessary to maintain international peace and security.<sup>71</sup> There are currently one hundred ninety-one member states of the United Nations, including Nigeria, which became a member on October 7, 1960.<sup>72</sup>

The United Nations is the primary international organization originally designed to prevent military confrontations among its members.<sup>73</sup> The General Assembly is the principal decision-making body and is comprised of representatives from all member states, each having one vote.<sup>74</sup> All treaties come before the General Assembly for deliberation and approval.<sup>75</sup>

Over the last fifty years, the United Nations has focused increasingly on the realization of human rights and fundamental freedoms for all.<sup>76</sup> These goals are effectuated through the creation and adoption of international agreements.<sup>77</sup> Human rights treaties are unique due to the lack of direct advantages or disadvantages to state parties.<sup>78</sup> There is no direct advantage to the state because the citizens are the beneficiaries; and there is no direct disadvantage if another state party stipulates a reservation because the citizens of the reserving state will be impacted, not

68. *About the United Nations*, available at <http://www.un.org/aboutun/history.htm>. (last visited Apr. 15, 2004)[hereinafter *About the UN*].

69. *About the UN*, *supra* note 68.

70. U.N. CHARTER art. 1, para. 3.

71. *Id.* art. 2, para. 6.

72. *List of Member States*, available at <http://www.un.org/aboutun/charter/index.html>. (last visited Apr. 15, 2004).

73. BARRY E. CARTER & PHILIP R. TRIMBLE, *INTERNATIONAL LAW* 505-06 (3d ed. 1999).

74. U.N. CHARTER art. 9, para. 1, 2; art. 18, para. 1.

75. CARTER & TRIMBLE, *supra* note 73, at 503.

76. *Id.* at 507.

77. Jennifer Riddle, *Making CEDAW Universal: A Critique of CEDAW's Reservation Regime Under Article 28 and the Effectiveness of the Reporting Process*, 34 *GEO. WASH. INT'L L. REV.* 605, 624 (2002).

78. *Id.*

other parties to the treaty.<sup>79</sup>

There are three agreements central to the practice of Shari'a in Nigeria. They are: the Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW"), the Optional Protocol to CEDAW, and the Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"). Nigeria is a member of CEDAW, a signatory of the Optional Protocol and a member of CAT.<sup>80</sup>

*A. The Convention on the Elimination of all forms of Discrimination Against Women*

CEDAW entered into force on September 3, 1981.<sup>81</sup> With one hundred sixty-eight member states, it is now the second most widely ratified human rights treaty, after the Convention on the Rights of the Child.<sup>82</sup> CEDAW began with the concern that, despite prior international agreements concerning human rights, extensive discrimination against women continued to exist.<sup>83</sup> Article 5 of CEDAW calls for States to "modify the social and cultural patterns of conduct of men and women."<sup>84</sup> Consequently, each member state is bound to take all appropriate measures to ensure that discrimination against women is eliminated in both the political and private life of the country.<sup>85</sup> Furthermore, CEDAW outlines internationally accepted rights applicable to all women including reproductive rights, the right to change nationality, equal access to healthcare, right to marry, right to vote, and the right to be free from exploitation.<sup>86</sup> It prescribes ways in which

79. *Id.*

80. *Status of Ratifications of the Principal International Human Rights Treaties*, Office of the United Nations High Commissioner for Human Rights, Dec. 9, 2002 at <http://www.unhcr.ch/pdf/report.pdf> (last modified Apr. 15, 2004).

81. Convention on the Elimination of all Forms of Discrimination Against Women, Dec. 18, 1979, at <http://www.hrcr.org/docs/CEDAW/cedaw.html> (last visited Apr. 15, 2004) [hereinafter *CEDAW*].

82. Elizabeth Evatt, *Finding a Voice for Women's Rights: The Early Days of CEDAW*, 34 GEO. WASH. INT'L L. REV. 515, 516 (2002); See generally Malvina Halberstam, *United States Ratification of the Elimination of All Forms of Discrimination Against Women*, 31 GEO. WASH. J. INT'L. & ECON. 49 (1997); Sean D. Murphy, *Senate Consideration of CEDAW* 96 AM. J. INT'L L. 971 (2002) (discussing why the U.S. had thus far refused to join both CEDAW and the Optional Protocol).

83. CEDAW, *supra* note 81, at Preamble.

84. *Id.* art 5, sec. a.

85. *Id.* art. VII.

86. See generally AP, *Ct. Upholds*, *supra* note 10.

member states can effectuate the main purpose of CEDAW: to effectively end discrimination from both the public and private lives of women.<sup>87</sup>

In order to become a member state to CEDAW, each country must either sign and ratify, or accede to the treaty.<sup>88</sup> Signatories to CEDAW are obligated to refrain from acting in any way that would frustrate its object and purpose.<sup>89</sup> Upon ratification or accession, states are legally bound to put into practice the standards set forth in the text of the convention.<sup>90</sup> Specifically, Article 2 of CEDAW states:

States Parties condemn discrimination against women in all forms [and furthermore] take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women.<sup>91</sup>

CEDAW further requires member states to submit a report within one year after ratification or accession, and then every four years thereafter detailing how the standards are being implemented within that country.<sup>92</sup>

CEDAW represents a divergence from the generally accepted standard that government should not interfere with the private lives of their citizens.<sup>93</sup> CEDAW recognizes the international right to privacy, yet not at the cost of equality.<sup>94</sup> Member states to CEDAW recognize that women often need the most protection in their private sphere, especially in the areas of child bearing, child rearing, and marriage.<sup>95</sup> Therefore, CEDAW respects customary practices and their expression, but does not allow them to act as a

87. Michele Brandt, *The Tension Between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia*, 12 J.L. & RELIGION 105, 106 (1995–1996).

88. Vienna Convention on the Law of Treaties, May 23, 1969, art 11 at <http://www.un.org/law/ilc/texts/treaties.htm> (last visited Apr. 15, 2004) [hereinafter *VCLT*].

89. *Id.* art. 19.

90. *Id.* art 14–15.

91. CEDAW, *supra* note 81, art. 2, secs. e–f.

92. *Id.* art. 18.

93. Eve McCabe, *The Inadequacy of International Human Rights Law to Protect the Rights of Women as Illustrated by the Crises in Afghanistan*, 5 UCLA J. INT'L L. & FOREIGN AFF. 419, 428 (2000–2001).

94. *Id.*

95. *Id.* at 429.

means of denying women equal rights.<sup>96</sup>

CEDAW defines “discrimination against women” as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>97</sup>

Utilization of the term “effect” forgoes the need to prove discriminatory intent.<sup>98</sup> Therefore, a member state is in violation of CEDAW not only for intentional discrimination, but also for any action or inaction that leads to inequity in the treatment of men and women.<sup>99</sup>

### B. The Optional Protocol

The Optional Protocol to the Convention on the Elimination of All Forms of discrimination against Women [hereinafter the Protocol] presents an optimistic future for the enforcement of CEDAW.<sup>100</sup> The Protocol was adopted by the General Assembly of the United Nations on October 6, 1999 and it entered into force on December 22, 2000.<sup>101</sup> The purpose of the Protocol is to remedy past inconsistencies in the application of CEDAW by member states, and enhance the protections it affords to women.<sup>102</sup>

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96. *Id.*

97. CEDAW, *supra* note 81, art. 1.

98. Kerri L. Ritz, *Soft Enforcement: Inadequacies of Optional Protocol as a Remedy for the Convention on the Elimination of all Forms of Discrimination against Women*, 25 SUFFOLK TRANSNAT'L L. REV. 191, 196 (2001).

99. See generally Anne F. Bayefsky, *The CEDAW Convention Today* 94 AM. SOC'Y INT'L L. PROC. 197 (2000) (discussing the CEDAW reporting process and its structural inadequacies); Aida Gonzalez Martinez *Human Rights of Women* 5 WASH. U. J. L. & POL'Y 157 (2001) (discussing generally the CEDAW and its impact on women's rights); Brad R. Roth, *The CEDAW as a Collective Approach to Women's Rights* 24 MICH. J. INT'L L. 187 (2002).

100. McCabe, *supra* note 93, at 433; See generally, Laboni Amena Hoq, *The Women's Convention and its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights*, 32 COLUM. HUM. RTS. L. REV. 677 (2001) (comparing the rights identified in each CEDAW and the Protocol).

101. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, 54th Sess. (1999) art. 2 [hereinafter *Protocol*] at <http://www1.umn.edu/humanarts/instree/cedawopprot-2000.html> (last visited Apr. 6, 2004 and a hardcopy is filed in the Syracuse Journal of International Law and Commerce office).

102. *Id.*

An example of such enhancement on CEDAW is Article 2 of the Protocol, commonly referred to as the communications provision.<sup>103</sup> This section allows for individuals, or their representative, to bring claims for violations of any of the rights of the Convention.<sup>104</sup> This represents an enormous advantage for individuals over the rights allowed for by CEDAW, which only allowed for states to bring claims on behalf of their citizens.<sup>105</sup> Because it is often the government of the state itself which either proactively, or inactively, supports the discrimination, it can be viewed as counterintuitive to allow only the state to bring a claim under CEDAW. In choosing to ratify the Protocol, states allow the CEDAW Committee to accept claims against them by one or more of their citizens.

The CEDAW committee is comprised of individuals with expertise in the area of human rights, serving not as agents of the state but in their personal capacity.<sup>106</sup> There are twenty-three members, all from different member states.<sup>107</sup> The 2003 committee includes Fatima Kwaku of Nigeria.<sup>108</sup> The inquiry provision on the Protocol allows the Committee to “probe into situations of grave or systematic violations of reservations to any of its terms.”<sup>109</sup> Article 5 of the Protocol allows for the Committee to request a state party to take interim measures necessary to avoid possible irreparable damage to the victims of the alleged violation.<sup>110</sup> Therefore, an individual would not have to wait for relief pending resolution of their claim. However, the Committee will only consider the complaints after the complainant demonstrates that he exhausted all domestic remedies available.<sup>111</sup>

The Protocol establishes a system of review whereby the state party, after being found in violation of the Convention, may be visited and observed by the Committee and will have six months to respond as well as accepting the duty to keep the Committee

103. Ritz, *supra* note 98, at 198.

104. Protocol, *supra* note 101 art. 2.

105. CEDAW, *supra* note 81, at art. 2.

106. Members of the 2003 CEDAW Committee, *available at* <http://www.un.org/womenwatch/daw/cedaw/members.htm> (last visited Apr. 15, 2004) [hereinafter CEDAW Committee].

107. *Id.*

108. *Id.*

109. Ritz, *supra* note 98, at 199.

110. CEDAW, *supra* note 81, at art.5.

111. *Id.*

informed on its progress.<sup>112</sup> The greatest step forward taken by the Protocol is that parties may not enter reservations to any of its terms.<sup>113</sup> However, there is an opt-out clause whereby states can declare upon ratification or accession that they do not accept the inquiry procedure.<sup>114</sup> Although the adoption of this protocol is a significant step toward effectuating the goals of the Convention, it, like all international law, derives its force from the willingness of the state party to not only sign and ratify, but to comply without the threat of a concrete enforcement mechanism.

### C. The Convention Against Torture

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") was adopted by the General Assembly on December 10, 1984.<sup>115</sup> "Torture" is defined in Article 1 as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>116</sup>

Parties to CAT are bound to take all measures necessary to prevent acts of torture and are allowed no exceptional circumstances whatsoever.<sup>117</sup> CAT further effectuates the prohibition of torture by providing that no party may extradite a person to another state where they have substantial grounds for

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112. Protocol, *supra* note 101, at art. 8–9; See for example Report of the Committee on the Elimination of Discrimination against Women, 27th Sess., 11 (Oct. 8, 2002), available at [http://www.un.org/womenwatch/daw/cedaw/27\\_sess.htm](http://www.un.org/womenwatch/daw/cedaw/27_sess.htm) (last visited Apr. 15, 2004).

113. Ritz, *supra* note 98, at 199; See generally Barbara Cochrane Alexander, *Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims*, 15 AM. U. INT'L L. REV. 895 (2000); Andrea Montavon-McKillip, *CAT Among Pigeons: The Convention Against Torture: A Precarious Intersection Between International Human Rights Law and U.S. Immigration Law*, 44 ARIZ. L. REV. 247 (2002) (discussing the domestic implications of CAT in the United States).

114. *Id.* at FN 47, citing Protocol, *supra* note 101, art. 8–9.

115. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984 [hereinafter *CAT*].

116. *Id.* art. 1.

117. *Id.* art. 2.

believing that the person would be in danger of being tortured.<sup>118</sup> CAT also establishes the right for an individual who has been subjected to torture to bring a cause of action for compensation and rehabilitation, which is in addition to any cause of action arising under the national laws of that state.<sup>119</sup>

CAT established a Committee Against Torture to oversee the accordance of member states with the principles set forth within the treaty.<sup>120</sup> The Committee has the right to investigate indications of systematic torture and report their findings to the United Nations Secretary General, who will in turn report to the General Assembly.<sup>121</sup> In the event that a state is found to be in violation of its duties under CAT and is unable to reach an agreement with the Committee, the General Assembly may sanction the state.<sup>122</sup>

### III. NIGERIA'S RESPONSIBILITIES UNDER INTERNATIONAL HUMAN RIGHTS LAW

#### A. CEDAW

As previously stated, Nigeria is a member of CEDAW and CAT and a signatory to the Protocol. Having ratified CEDAW and CAT, Nigeria has undertaken the legal obligations outlined by each treaty, and did so without reservation.<sup>123</sup> In ratifying CEDAW and CAT, Nigeria indicated to the international community that it was committed to effectuating the treaty domestically.<sup>124</sup> The obligation that Nigeria has under the Protocol as a signatory differs from that which it would have after ratification. Signature of a treaty by a state simply creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty, and indicates the State's intention to be bound by the treaty at a later date.<sup>125</sup> Nigeria is, therefore, neither responsible for implementing the provisions of the

118. *Id.* art. 3.

119. CAT, *supra* note 115, art. 14.

120. *Id.* art. 17.

121. *Id.*

122. *Id.* art. 20–21.

123. VCLT, *supra* note 88, art. 14-15.

124. U.N. Treaty Handbook, ch. 3, available at <http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm> (last visited Apr. 15, 2004) [hereinafter U.N. Handbook].

125. VCLT, *supra* note 88, art. 18.

Protocol, nor can citizens bring claims against the government to the Committee.

Nigeria's last report to CEDAW was in 1998, prior to the formal implementation of Shari'a in the northern states.<sup>126</sup> In its report to CEDAW, the representative noted that traditional practices had a heavy impact on the implementation of CEDAW in rural areas.<sup>127</sup> The representative concluded that customary, traditional, and religious practices impeded the advancement of women, and that despite considerable progress, there was much work needed to gain equality between the sexes.<sup>128</sup> Based upon the Nigerian report the Committee made several findings and recommendations to Nigeria in order for them to further comply with their responsibilities under CEDAW.

The Committee found the predominance of cultural stereotypes prejudicial to women in Nigeria present serious dangers to the physical and emotional health of women, violating their fundamental human rights.<sup>129</sup> "The coexistence of three legal systems, civil, religious and customary, makes it difficult to adopt and enforce laws which genuinely protect women's rights."<sup>130</sup> The committee was "very concerned" with the violation of women's human rights by religious and customary laws and practices in the family context and recommended that measures be taken to change laws and cultural norms allowing for such injustices as polygamy, one-sided repudiation, and unequal subsistence rights.<sup>131</sup> Furthermore, the committee found that in spite of Nigeria's ratification of CEDAW without reservation, the Convention was not adequately implemented into the legal and constitutional framework.<sup>132</sup>

### *B. Reservations to CEDAW based upon Islamic Law*

Although Nigeria did not make reservations to CEDAW,

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126. *Implementation of the Beijing Platform for Action and Compliance with International Legal Instruments on Women*, available at <http://www.un.org/womenwatch/daw/country/compliancetbl.PDF>. (last visited Apr. 10, 2004).

127. *Report of the Committee on the Elimination of Discrimination against Women*, 18th and 19th Sess. at 62. U.N.Doc. A/53/38/Rev.1 (1998) [hereinafter Report].

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 63.

132. Report, *supra* note 127, at 63.

many other states where Shari'a is in practice have ratified CEDAW subject to the applicability of Islamic Law. Reservations are "unilateral statements, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in application to that State."<sup>133</sup> Parties make reservations when they wish to accept most of the obligations of the treaty but do not agree with a particular provision.<sup>134</sup> Reservations are therefore effective in enabling states to participate in multilateral treaties that they would otherwise be unwilling or unable to participate in.<sup>135</sup> In narrowly defining their obligation, reserving states avoid adhering to provisions they do not intend to implement, making them less accountable to the convention.<sup>136</sup> CEDAW has grown in membership numbers due to the ability of states to make broad reservations, therefore, giving it a worldwide membership.<sup>137</sup> Despite the growth in membership numbers, CEDAW remains ineffective in many member states due to the power of reservation, and the lack of enforcement mechanisms.

Reservations to CEDAW cannot contradict "the object and purpose of the treaty."<sup>138</sup> When a state has made a reservation, other member states to CEDAW have the option of accepting the reservation either expressly, or impliedly; or "they can object to the reservation; or they can object and preclude the treaty from entering into force between them and the reserving state."<sup>139</sup> Therefore, CEDAW member states have a great deal of subjectivity in determining their position with regards to a reserving state, despite the intention that it be an objective standard.<sup>140</sup>

133. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980) art. 2, ¶ 1, § d, *cited in* Riddle, *supra* note 76, at 605.

134. CARTER & TRIMBLE, *supra* note 73, at 132.

135. U.N. Handbook, *supra* note 124.

136. Riddle, *supra* note 77, at 618.

137. *Id.* at 622.

138. CEDAW, *supra* note 81, art. 28; This stipulation on reservations stems from the ICJ advisory decision in the Genocide Convention Case 1951 I.C.J. 15. There the court held that states may ratify a treaty with reservation without assent by all member states of the reservation, and that all reservations to multilateral treaties should be evaluated to ensure that their reservation does not violate the defeat the object and purpose of the treaty.

139. Riddle, *supra* note 77, at 609; *see also* VCLT, *supra* note 189, arts. 18–23.

140. Belinda Clark, *The Vienna Convention Reservations Regime and The Convention*

There are twelve states that made reservations to CEDAW contingent upon Shari'a. They are Bahrain, Bangladesh, Egypt, Iraq, Kuwait, Libyan Arab Jamariya, Malaysia, Maldives, Mauritania, Morocco, Saudi Arabia, and Pakistan.<sup>141</sup> An example of such a reservation is that which was issued by Egypt upon ratification and that states in pertinent part: "The Arab Republic of Egypt is willing to comply with the content of this article (2), provided that such compliance does not run counter to the Islamic Shari'a."<sup>142</sup> This reservation applies to Article 2 of CEDAW, which states: "States Parties condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. . ."<sup>143</sup> Germany, Mexico, Netherlands and Sweden all entered objections to the reservation made by Egypt, stating that it was contrary to the object and purpose of the treaty.<sup>144</sup> Each of these four countries explicitly stated that, although it objected to the reservation, it did not render the treaty unenforceable between itself and Egypt.<sup>145</sup>

The general reservation made by Egypt to Article 2 of CEDAW allowed for Shari'a law to take precedence over the implementation of legislation to eradicate discrimination against women within Egypt.<sup>146</sup> Egypt escapes liability for violations under Article 2, as long as it can show that they were acting in accordance with Shari'a.<sup>147</sup> This reservation arguably undermines the object and purpose of the treaty, as the Committee called on States to re-examine their reservations to Article 2, stating that withdrawal of these reservations would indicate their strong commitment to achieving the full equality of women.<sup>148</sup> "The Convention allows States to commit themselves to women's

on *Discrimination Against Women*, 85 AM. J. INT'L L. 281, 301 (1991).

141. Report of the Committee on the Elimination of Discrimination Against Women, 20th Session, 1999.

142. CEDAW Reservations, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty10.asp> (last visited Apr. 15, 2004) [hereinafter Reservations].

143. CEDAW, *supra* note 81, art. 2.

144. Reservations, *supra* note 142.

145. *Id.*

146. *Id.*

147. VCLT, *supra* note 88, art 21.

148. Report of the Committee on the Elimination of Discrimination Against Women, 20th Session, 1999, available at <http://www.un.org/womanwatch/daw/cedaw/20thsess.htm> (last visited Apr. 15, 2004).

equality, while simultaneously admitting they have no intention of granting women equality.”<sup>149</sup> This same hypocrisy exists in all treaties allowing reservations, perpetuating the constant struggle between enforcing international law and maintaining domestic sovereignty.

The reservations made by States in correlation with Shari'a have been vigorously attacked by women's rights advocates around the world, as well as opposed by other members to CEDAW, and yet the reservations still stand. As Ann Elizabeth Mayer points out, the ongoing tension between Islamic and western culture is one reason for this dichotomy:

Attempts to deter the practice for reservations in conflict with the object and purpose of CEDAW have met resistance in the form of accusations that these were tantamount to Western attacks on Islam and or the Third World. An attempt made by the CEDAW committee in 1987 to examine the basis for reservations that used Islam as the grounds for non-compliance. . . resulted in a strong diplomatic backlash. Muslim countries quickly rallied to stop the project intimating that the CEDAW committee was engaged in cultural imperialism and attacking Islam.<sup>150</sup>

Reservations are not the sole cause for the ineffective nature of CEDAW and CAT. As previously stated, Nigeria entered both treaties without reservation, and yet the implementation of Shari'a in the northern states sentenced Amina Lawal to death by stoning. The lack of compelling sanctions and penalties for non-compliance allow for state parties such as Nigeria to choose not to enforce its terms.<sup>151</sup> There is no effective enforcement mechanism to prevent Nigeria and other states from discriminating against women.<sup>152</sup> CEDAW does not authorize the Committee to find a state party in violation of its provisions, nor does it allow for situations to be redressed in a timely manner.<sup>153</sup> As a result, CEDAW has become more of a “statement of intent than a set of internationally binding obligations.”<sup>154</sup>

149. Julie A. Minor, *An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women*, 24 GA. J. INT'L & COMP. L. 137, 144 (1994).

150. Ann Elizabeth Mayer, *A Benign Apartheid: How Gender Apartheid has been Rationalized*, 5 UCLA J. INT'L L. & FOREIGN AFF. 237, 271 (2001).

151. See Ritz, *supra* note 98, at 204.

152. *Id.* at 205.

153. *Id.*

154. Clark, *supra* note 140, at 285–86.

### C. The Protocol

The Protocol does little to further promote the effectiveness of CEDAW. The Protocol applies only to States party to both CEDAW and the Protocol, thereby limiting its reach only to the 47 party States who have ratified both documents.<sup>155</sup> Since ratification is optional, members of CEDAW are not required to sign or ratify the Protocol in order to maintain membership in CEDAW. State parties can “opt out” of Articles 8 and 9, precluding the Committee from investigating within a State against whom a complaint is filed.<sup>156</sup> Such a reservation eliminates the key advancement that the Protocol boasts, rendering it worthless.

The Protocol is non-binding and failures to adhere to its terms are not sanctionable.<sup>157</sup> Once the Committee finds a State violative of its duties, its decision is merely advisory, and no mechanism exists to administer the recommendations made by the Committee in redressing the violation.<sup>158</sup> Therefore, the Protocol becomes another soft law addition to human rights jurisprudence with little discernable impact on the actions of member states.

### D. CAT

Shari'a implementation in Nigeria also conflicts with the country's duties under CAT, which was ratified by Nigeria in June of 1991, following the implementation of Shari'a in the northern states.<sup>159</sup> The punishments called for by Shari'a include stoning to death, flogging, and amputation.<sup>160</sup> CAT applies where state officials inflict, consent, or acquiesce to torturous acts.<sup>161</sup> Under CAT, “[no] exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>162</sup>

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155. Clark, *supra* note 140, at 209.

156. Ritz, *supra* note 98, at 210; Protocol, *supra* note 101.

157. *Id.* at 211, citing Andre Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?*, 21 BROOK. J. INT'L L. 679 at 766–67 (1996).

158. See Protocol, *supra* note 101, art. 8–9.

159. CAT Status of Ratification, at [www.unhchr.ch/html/menu2/6/cat/treaties/conratification.htm](http://www.unhchr.ch/html/menu2/6/cat/treaties/conratification.htm) (last visited Apr. 15, 2004).

160. J. Schacht, *Law and Justice*, CAMBRIDGE ENCYCLOPEDIA OF ISLAM, vol. II, pt. VIII/ch. 4 at 541.

161. CAT, *supra* note 115, art. 1.

162. *Id.* art. 2.

Inaction is viewed as action under CAT.<sup>163</sup> Therefore, as long as the official government refuses to take action to prevent the occurrence of torture within the country, Nigeria is in violation of their duties despite the fact that Shari'a is not the official government of the state.

*E. Amina's Rights under international Law*

CEDAW, the Protocol, and CAT provide citizens like Amina with enforceable rights within Nigeria. Under CEDAW, Nigeria has undertaken to prevent all forms of discrimination against women.<sup>164</sup> The failure of the Nigerian government to intervene in the implementation of a legal system such as Shari'a, which places value on female modesty and chastity and considers female sexuality threatening, seriously undermines the country's treaty obligations.<sup>165</sup> However, CEDAW allows for the member State, not the individual, to bring claims of discrimination.<sup>166</sup> A subcommittee then reports to the CEDAW committee and represents Amina.<sup>167</sup> The committee could then take the necessary steps toward ending discriminatory practices such as the male dominance that Shari'a promotes.<sup>168</sup> The process is lengthy and further frustrated by Amina's inability to bring the claim herself, instead having to rely on her government, whose inaction is at least partially responsible for the abridgement of her rights. As a consequence, Amina had little hope of invalidating her sentence under CEDAW.

The Optional Protocol, once ratified, would give Amina the ability to bring a claim directly against the State to the committee.<sup>169</sup> The ability of the committee to take interim measures to avoid irreparable harm would have afforded Amina a stay to her execution while her situation was investigated.<sup>170</sup> If determined to be necessary, the committee would then have the

163. *Id.* art. 1.

164. CEDAW, *supra* note 81.

165. Blake M. Guy, *Female Genital Excisions and the Implications of Federal Prohibition*, 2 WM. & MARY J. WOMEN & L. 125, 142 (1995).

166. *See generally* CEDAW, *supra* note 81, arts. 17–21; *see also* Fact Sheet No. 22, *Discrimination Against Women: The Convention and Committee*, at [www.unhcr.ch/html/menu6/2/fs22.htm#implementing](http://www.unhcr.ch/html/menu6/2/fs22.htm#implementing) (last visited Apr. 15, 2004).

167. *Id.*

168. *Id.*

169. Protocol, *supra* note 101, art. 2.

170. *Id.* art. 5.

power to declare violations to the treaty and submit its outline for proposed changes to the Nigerian government.<sup>171</sup> Furthermore, the government would then have the opportunity to remedy the violations before the committee takes further actions, such as petitioning the U.N. General Assembly to impose economic sanctions.<sup>172</sup> Due to Nigeria's current signatory status, Amina's only hope under the Protocol was that the inaction taken by the Nigerian government classifies as frustrating the object and purpose of the treaty.<sup>173</sup> However, this is unlikely because Amina would have had to rely on the CEDAW administrative process, which stipulates that the State bring her claim.<sup>174</sup> Therefore, unless ratified, the Protocol offered little recourse to Amina.

Under CAT, individual citizens of a State party have the right to bring complaints to the committee when their rights under the treaty have been threatened or abrogated.<sup>175</sup> For an individual to do so, the State must have expressly recognized the power of the Committee Against Torture to admit and examine individual communications.<sup>176</sup> Since Nigeria signed CAT in 1988 and did not ratify until 2001, it has yet to expressly recognize the Committee under article 21. As such, neither Amina nor her relatives or representatives may have entered a complaint regarding her impending execution.<sup>177</sup> Instead, Nigeria must have filed a complaint with the committee on her behalf.<sup>178</sup> CAT requires that all domestic remedies must be exhausted before invoking the protection that it affords.<sup>179</sup>

Amina had a far greater chance for success under CAT than under CEDAW or the Protocol. Having ratified the treaty in June 2001, Nigeria is required to submit a report to the committee outlining how they intend to implement the treaty into their domestic legislation, as well as the steps that they have already

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171. Protocol, *supra* note 101, art 7–8.

172. *Id.* art 9.

173. VCLT, *supra* note 88, art. 12.

174. CEDAW, *supra* note 81, arts. 17–21.

175. CAT, *supra* note 115, at art. 22.

176. Overview of the Procedure under the Convention Against Torture, *available at* <http://193.194.138.190/html/menu2/8/overcat.htm>. (last visited Apr. 10, 2004) [hereinafter Procedure].

177. *See generally* CAT, *supra* note 115, art. 12–14, 21.

178. *Id.*

179. *Id.* art. 21(a).

towards achieving compliance within one year of ratification.<sup>180</sup> Nigeria was scheduled to submit their report to the Committee in July 2002 but missed the deadline.<sup>181</sup> Compliance with CAT would require the Nigerian government to take affirmative steps to end the use of torture within the State.<sup>182</sup> By stepping in to prevent Amina's death by stoning, Nigeria would have effectuated the primary objectives of CAT, thus fulfilling their treaty obligations. Nigeria could then report its actions to the committee, and have met their treaty obligations to begin domestic prevention of torture and reporting on their progress. Therefore, the timeliness of Nigeria's ratification of CAT provided Amina with her greatest chance for protection under international law.

#### IV. PROPOSED MECHANISMS FOR EFFECTUATING INTERNATIONAL OBLIGATIONS

International human rights laws can no longer exist as soft laws with little or no effective enforcement methods. A tremendous gap exists between what is theoretically guaranteed to women and what women actually experience around the world.<sup>183</sup> On paper, women are free from discrimination in 168 countries.<sup>184</sup> In each of those countries, legislation should be applied consistently, equalizing the rights of men and women.<sup>185</sup> In each CEDAW country, men and women should have equal property rights, marriage rights, parental rights, access to employment, and healthcare.<sup>186</sup> In reality, women continue to face discrimination in many ways throughout the CEDAW countries.<sup>187</sup> Reform is necessary to bridge the gap between guarantees and reality. To effectuate the provisions of CEDAW, the Protocol, and CAT, changes must be made regarding reservations, applicability, and

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180. *Id.*

181. *Report of the Committee Against Torture*, 27th and 28th Sess. at 93, U.N. Doc. A/57/44 (2002).

182. CAT, *supra* note 115, art. 2.

183. McCabe, *supra* note 93, at 459.

184. *Status of Ratifications of the Principal International Human Rights*, *supra* note 79.

185. See CEDAW, *supra* note 81, art 2.

186. *Id.* arts. 2–16.

187. See generally Evatt, *supra* note 82; Ritz, *supra* note 98; Chantelle Forgues, *Global Hurdle: The Implementation of an International Nondiscrimination Norm Protecting Women From Gender Discrimination in International Sports* 18 B.U. INT'L L. J. 247 (2000); Mayer, *supra* note 150; Jo Lynn Southard, *Protection of Women's Human Rights Under the Convention on the Discrimination Against Women*, 8 PACE INT'L L. REV. 1 (1996).

enforcement.

To ensure international peace and security, the United Nations has the power to enforce the principles of its Charter upon non-members.<sup>188</sup> One of these principles is the “achievement of international cooperation. . .in promoting and encouraging respect for human rights. . .without distinction as to. . .sex.”<sup>189</sup> In promoting this core principle, CEDAW should apply to members and non-members; thereby, encouraging non-members to the Convention and the Protocol to ratify both with limited opportunity for reservations.

The reservation process must be refined to allow only for narrowly defined reservation to specific portions of the treaty.<sup>190</sup> The object and purpose of the treaty must be in the initial article, to which no country will be allowed reservations. Although preservation of religious laws and customs are the baseline for much ratification, the broad based reservations currently in existence severely undermine the purpose and effect of many treaties.<sup>191</sup> The restructuring of reservations will further CEDAW’s goal to realign States’ priorities in protecting religious sensibilities and women’s rights.<sup>192</sup>

The treaty monitoring process must be reformed to give the CEDAW Committee substantial power to oversee the compliance of member States.<sup>193</sup> More effective follow-up procedures as well as imminent repercussions for failure to meet report deadlines may lead to greater commitment of States to fulfill their obligations under CEDAW.<sup>194</sup> The Committee should have the power to overrule reservations that go against the object and purpose of the treaty.<sup>195</sup> Furthermore, timetables must be implemented to ensure that justice is swift. The improved scheme outlined in the Protocol allows for six-month intervals between complaint, answer, and review of reported violations.<sup>196</sup>

To better implement the provisions, CEDAW must be

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188. U.N. CHARTER art. 2, para. 6.

189. *Id.* art. 1, para. 3.

190. Brandt, *supra* note 87, at 141.

191. *Id.*

192. *Id.*

193. Evatt, *supra* note 82, at 552–53.

194. *Id.* at 553.

195. Riddle, *supra* note 77, at 637.

196. Protocol, *supra* note 101, art. 6.

amended to increase the number of committee members. The members would divide by geographic regions such as continents, and then further subdivided by regions. This will allow committee members to become familiar with the governments in their region, as well as their history of compliance with their responsibilities under the treaty. Such an expansion will also expedite the complaint process by allowing each committee to issue a ruling and assign damages. These smaller committees would also have the preliminary injunctive powers suggested under the Protocol. Where a threat of imminent harm is found to exist, the Committee could suspend the injurious action pending its review of the circumstances. The result would be faster and more effective functioning of the current committee with binding effect. Individuals or their representatives could petition the Committee at large and request an appeal from the decision of the sub-committee, which the Committee could grant if substantive legal issues need to be addressed.

Enforcement mechanisms must be installed to ensure compliance by State parties with CEDAW and the Protocol.<sup>197</sup> The United Nations Security Council has the authority to extend economic and trade sanctions.<sup>198</sup> Sanctions are non-military measures used to influence nations to conform to some desired behavior or to punish a nation for violating international law.<sup>199</sup> Therefore, sanctions should be levied against signatory countries that consistently violate CEDAW.<sup>200</sup> To avoid additional inconsistencies in application of sanctions, a detailed definition of what constitutes an egregious violation, as well as a three-strike system for warning a country of their violation, should be employed.

Once a State party is found to consistently and egregiously violate their responsibilities under international human rights law, the corresponding committee should enter the country in order to monitor the government's actions. By allowing a team of committee members into the country, their presence will serve as a constant reminder to the leadership of their international

197. McCabe, *supra* note 93, at 459.

198. U.N. CHARTER art. 41.

199. Joy K. Fausey, *Does the United Nations Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?*, 10 CONN. J. INT'L L. 193, 194 (1994).

200. McCabe, *supra* note 93, at 459.

obligations, as well as their obligations to their own population. This team would work with the domestic lawmakers to design an enforcement scheme that compliments the needs of that particular country. The formulation of the team members will depend on the demographics of the country. For example, in Nigeria, members would have to be educated about the various aboriginal tribes, the history of political turmoil, the current government as well as Shari'a Law. Such a system would work toward a solution by understanding the problem, and respecting the culture and civilization of that sovereign state. Although the Nigerian government has failed to take action to stop the violations of its citizens' human rights, it has not actively supported the mistreatment.

Where the domestic government has continuously tried and failed to ensure the human rights of its population, a third party would be most beneficial in providing a fresh approach to finding a solution. This resident team approach would likely not be successful in countries where the government is itself committing the violations and continuously refusing to remedy their actions. In situations such as that, economic sanctions or occupation by U.N. forces may be more effective.

These proposed steps are a far cry from ensuring international equal rights to women. What they represent are a series of small steps that will lead the global community in the direction that CEDAW, the Protocol and CAT prescribe. At the least, the grant of broad reservation powers must cease, regardless of the cultural, religious, or moral foundations upon which they purport to rest. For Nigeria, these steps would likely cause a great deal of internal conflict, as made clear by the incessant violence, riots, and civil war plaguing the country on a daily basis.

As evidenced by the Miss World pageant, a great deal of tension exists between the Muslim north and the Christian south in Nigeria.<sup>201</sup> It is likely that once faced with the possibility of sanctions, or even a trade embargo, Nigeria would quickly react to the suggestions of the CEDAW Committee.<sup>202</sup> Nigeria's entire

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201. See AP, *Miss World Leaves Nigeria*, *supra* note 62.

202. For a discussion on the effectiveness of sanctions, see Richard W. Parker, *The Problem with Scorecards: How (And How Not) To Measure the Cost-Effectiveness of Economic Sanctions*, 21 MICH. J. INT'L L. 235 (2000); see also Joy K. Fausey, *Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?*, 10 CONN. J. INT'L L. 193; see also Cassandra LaRae-Perez, *Economic Sanctions As a Use of Force: Re-evaluating the Legality of Sanctions From an*

economy is dependent upon the exportation of oil, as the sixth largest producer of petroleum in the world.<sup>203</sup> It also has no operating oil refineries and must import gasoline.<sup>204</sup> The current civil unrest prompted a recent thirty percent cutback in oil production by Chevron.<sup>205</sup> Chevron's cutback has received international attention and provoked the government to take further military action in order to control the situation.<sup>206</sup>

This reaction by the government illustrates that the threat of economic or trade sanctions would likely impact their decision to react to the enforcement of Shari'a law within Nigeria. Once the government took positive steps to ensure that torturous punishments are no longer used and that justice is delivered without attention to gender, the international community would view Nigeria as attempting to fulfill their international commitments. This compliance may come at the enormous cost of peace within the country as the Islamic north and Christian south collide over the tension between religious freedom and human equality. However, forced compliance with international treaties will no doubt also come at a price to Nigeria, one which may hinder their ability to enter into future treaties for fear of the domestic consequences, but that cannot bar the enforcement of international human rights for women.

#### CONCLUSION

Amina Lawal's life may have been saved by international pressure forcing Nigeria into compliance with CEDAW and CAT, yet the battle for women's rights would have scarcely begun. In Nigeria, or any predominantly Islamic country, women face daily struggles against sexist regimes cloaked in religious tradition. Outside the Islamic faith, women struggle to overcome the same history of diminution and male dominance.

The global community has identified discrimination against women as a threat to international peace and progress. The result of this realization is CEDAW and the Protocol. Each reflects a worldwide commitment to ending the disparity between the sexes. Each treaty is inadequate not for a lack of vision, but for a lack of

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*Effects-Based Perspective*, 20 B.U. INT'L L. J. 161 (2002).

203. Starr, *supra* note 36, at 390.

204. *Id.*

205. AP, *Oil Crises*, *supra* note 55.

206. *Id.*

enforcement.

The international community must respond to the enduring crisis that is soft law. The treaty process must be revised to include enforcement mechanisms that deliver quick, consistent outcomes. Reservations must be narrowly tailored and granted only if consistent with the object and purpose of the treaty. Committees created to effectuate the goals of treaties must be given the power to adjudicate complaints and assign reparation. These committees must have injunctive powers to prevent the possibility of further injury to complainants during their period of review. Changes such as those proposed here are vital to the future of the international community. A baseline for human rights for women must be universally accepted and enforced to prevent future loss of life. Action must be taken to ensure equality. Thousands of lives, like that of Amina, depend on it.