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Gender Discrimination and Workplace Equality: Assessing the Impact of Nigerian Labour Laws

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ABSTRACT

The paper interrogates gender discrimination in the workplace, in the bid of ensuring equality. No doubt, gender discrimination remains a persistent issue in Nigeria workplaces, despite the existence of legal framework aimed at ensuring equality. It critically examined the effectiveness of Nigerian Labour Laws including the Labour Act 1974, and the Constitution of the Federal Republic of Nigeria 1999(as ammended), in addressing workplace discrimination against women. The paper adopted the doctrinal research methodology. Going forward, the paper highlighted on some legal regulatory framework on workplace discrimination. It x- rayed key issues such as wage disparities, limited career advancement opportunities, hiring biases and workplace harassment. The paper further evaluated the role of international legal framework, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Labour Organisation (ILO) Convention, in shaping Nigeria's labour policies. However, despite Nigeria's ratification of these treaties, their lack of domestication into national law weakens their impact. Furthermore, enforcement mechanisms remain inadequate, allowing discriminatory practices to persist. The paper argued for a shift from formal to substantive equality, advocating for legal reforms that recognises structural inequalities and provide targeted solutions. Strengthening institutional framework, improving workplace policies and forstering cultural change are essential to achieving true gender equality in employment. This paper underscores the need for proactive government intervention, corporate accountability and a legal system that effectively protects women's rights in the workplace.

Keywords: Discrimination, Equality, Gender, Impact and Workplace.

1. INTRODUCTION

Gender discrimination remains a pervasive issue in workplaces across the world, including Nigeria. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) under section 42 guarantees the right to freedom from discrimination on the basis of sex, ethnicity, religion, or political affiliation. Despite this constitutional safeguard and other legislative interventions aimed at promoting workplace equality, women continue to face challenges such as wage disparities, limited career advancement opportunities, and gender-based biases in hiring and promotions. The Nigerian legal framework provides several statutory provisions designed to protect employees from discriminatory practices. Notably, the Labour Act [1] prohibits discrimination based on gender in employment conditions and wages. The prevailing laws and policies of the Nigerian government; local and municipal laws do not give a wide coverage and recognition to the rights of women in the workplace.[2] Due to this, women are sometimes left unprotected by the legislations; and where there are, provisions made for them they are not all embracing such that it will meet their legal needs. While the policies, which are written in their favour, are not articulate enough and still exposes them to being vulnerable.[3]

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[1] Labour Law of Nigeria 1974, Cap L1, Laws of the Federation of Nigeria 2004.

[2] M Nasir, 'Women's Rights in Nigeria' in M Tabiu and M Ladan (eds), *Individual Rights and Communal Responsibility in Nigeria* (National Human Rights Commission 1998) 15 – 27.

[3] C K Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Unilag Press 2011) 69.

When people are in unequal situations, treating them in the same manner invariably perpetuates, rather than eradicates, injustices. In societies around the world, female status generally is viewed as inferior and subordinate to male status.[4] The historic subordination, silencing, and imposed inferiority of women are not simply features of society but a condition of society, even though the society tries to rise beyond it in recent times.[5] Societies have modeled their gender-role expectations on these assumptions of the "natural order" of humankind.[6]

This paper examines the impact of Nigerian labour laws in addressing gender discrimination and fostering workplace equality. It explores the effectiveness of existing legal provisions, including the Labour Act, the Constitution, and international treaties ratified by Nigeria. Furthermore, it assesses the gaps in implementation and enforcement that allow discriminatory practices to persist.

CONCEPTUAL CLARIFICATION

Discrimination

Definition of discrimination is in different international instrument such as the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Also in the International Labour Organisation Convention concerning Discrimination in Respect of Employment and Occupation, the Convention for the Rights of Persons with Disabilities (CRPD), and the Convention against Discrimination in Education. From all the definitions, 'discrimination' refers to any distinction, exclusion or preference, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, disability, colour, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the equal enjoyment of any rights in relation to right at work. Other grounds of prohibited discrimination are age, sexual orientation, and gender identity. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) does not define what discrimination is but makes provision for discrimination. Section 42 of the CFRN provides for the right to freedom from discrimination based on ethnic group, place of origin, sex, religion, or political opinion. This right tends to ensure the equal treatment of and equal opportunity for persons/workers irrespective of sex, race, religion, nationality, etc. Discrimination based on sex, refers strictly to "biological characteristics", or it may also include "socially constructed roles and responsibilities assigned to a particular sex (gender)".

Discrimination has a wide-ranging effect on labour relations at the work place. It runs from, the method an employer employs i.e. in making selections of whom to employ, the terms on which he offers employment, access to promotion, transfer, training or other benefits, or dismissal. There are two categories of discrimination, which are the direct discrimination, and indirect discrimination. Direct discrimination is a blatant unequal treatment of employees on the ground of sex, race, religion, circumstance of one's birth, etc. It is when an employer, on the ground of sex, race, religion, etc. treats an employee less favourably than others. While indirect discrimination refers to an apparently 'neutral' law, practice, or criterion, which applies equally to employees at work but the result favours one group over a more disadvantaged group. In determining the existence of indirect discrimination, it is not relevant whether there was intent to discriminate on any of the prohibited grounds. It is the consequence or effect of a law or action that determines whether it is discriminatory or not.

Equality

There exists a link between equality and unfair discrimination. The absence of equality indicates the presence of discrimination. Underpinning the concept of equality is the emphasis on dignity. Equality is a simple concept, yet there exists divergent opinions as to what equality is and how it should be incorporated into the society. To promote equality in the workplace there are two approaches, formal and substantive. Formal approach is 'neutral' law, practice, or criterion, which applies equally to

[4] C Bunch, 'Women's Right as Human Rights: Towards a Revision of Human Rights' [1991] (12)(4) *Human Rights Quarterly*, 486- 498; C Bunch, 'Beijing Backlash and the Future of Women's Human Rights' [1995] (1) *Health and Human Rights: An International Quarterly Journal*, 449-460.

[5] C Abimiku, 'Poverty and the Nigerian Economy: A Gender Perspective' [2006] (7)(1) *African Journal of Economy and Society*, 136 – 145.

[6] E Osita, *Human Right in Africa: Some Selected Problems* (Lagos: Macmillan 1984) 10.

employees at work, this brings about injustice because when people are in unequal situations, treating them in the same manner invariably perpetuates, rather than eradicates, injustices. While substantive approach takes cognizance of the peculiarity and diversity of the modern day society. It extends beyond sameness of treatment; it refers to equality in outcome and includes an acceptance of unequal treatment of categories of people in order to achieve the goal of equality. Based on this, certain exceptions have been recognised as permissible; certain preferential treatment, such as the special treatment aimed at protecting pregnant women or disabled persons, is not considered discrimination as the purpose of the preferential treatment is to remedy inherent inequalities. Similarly, affirmative action (reverse discrimination), defined, as measures necessary 'to diminish or eliminate conditions which cause or help to perpetuate discrimination' aimed to benefit historically disadvantaged groups within society, is not 'discrimination' e.g. federal character.

Gender

Gender is not something we are born with, and not something we have, but something we do[7] – something we perform.[8] Sex is a biological categorization based primarily on reproductive potential, whereas gender is the social elaboration of biological sex. Gender according to the World Health Organisation is "the characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. As a social construct, gender varies from society to society and can change over time."[9] Gender-based roles and other attributes can change over time and vary with different cultural contexts. Many cultures recognize genders beyond the binary where individuals have an internal sense of both masculinity and femininity or neither. Gender is a classification system that influences access to power and resources and shapes how individuals (particularly women and men) relate to one another. This concept is useful in analyzing how commonly socialized gender norms legitimize discrepancies between the sexes.[10]

Workplace

A workplace is a location or environment where individuals perform their job duties for an employer.[11] The specific characteristics of workplaces can vary widely across industries. Well-equipped workplaces are essential for enabling effective work performance. Workplaces can be on-site, mobile, or fully remote.[12] More generally, the workplace is a learning space; however, opportunities to learn new things on the job vary with the characteristic and position of the job, which exacerbates inequalities.[13] Workers who are already better positioned in the labour market have more opportunities and incentives to acquire and develop competencies.

Impact

This is a result or effect that is caused by or attributable to a project or program. Impact is often used to refer to higher level effects of a program that occur in the medium or long term, and can be intended or unintended and positive or negative.[14] Impact describes all the changes which are expected to happen due to the implementation and application of a given policy option/intervention.[15] Such impacts may occur over different timescales, affect different actors and be relevant at different scales. In essence, impact is effect, influence, or consequences that Nigerian labour laws have on addressing gender discrimination and promoting workplace equality. It encompasses both positive and

[7] C West and D Zimmerman, 'Doing Gender' [1987] (1) *Gender and Society*, 125–151.

[8] J Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York and London: Routledge 1990) 28

[9] WHO, 'Gender and Health' <https://www.who.int/health-topics/gender#tab=tab_1> accessed 21 March 2025.

[10] M R Kaufman and others, 'Differentiating Sex and Gender in Health Research to Achieve Gender Equity' [2023] (101) *Bull World Health Organ*. 666-671.

[11] Apcien, 'What is a Workplace' <https://aptien.com/en/kb/articles/what-is-workplace>accessed 22 March 2025.

[12] P Jackson and R Suomi, *e-Business and Workplace Redesign* (Routledge 2004) 37.

[13] R Desjardins, 'Participation in Adult Learning' in *International Encyclopedia of Education* (3rd edn, Elsevier 2010) 240.

[14] USAID, 'Glossary of Evaluation Terms' <http://1.usa.gov/1Tow8cN>accessed 22 March 2025

[15] European Commission, 'Glossary' <https://enlargement.ec.europa.eu/enlargement-policy/glossary_en>accessed 22 March 2025.

negative outcomes, including how these laws shape employment practices, protect workers' rights, and contribute to reducing or perpetuating gender disparities in the workplace.

Feminist Legal Theory

In the 1970s feminist legal theory (FLT) furthered feminist legal practice. Feminist lawyers saw themselves as advocates of "women's rights," interested in winning legal victories in particular cases. However, feminist jurisprudence has become less interested in arguing to judges.[16] Instead, its attention has turned to the critique of law itself as a construct of patriarchy. As a practical matter this shift was provoked by the apparent deficiencies of the ostensibly neutral, formal equality strategy in cases involving problems, like pregnancy, that judges thought reflected bedrock biological differences between women and men.[17] One significant body of work within this critical movement argues that sex is not an issue that can be made to disappear through gender-neutral methods of analysis. This scholarship builds on the insights of Catharine MacKinnon, the only feminist legal theorist to come up with a unifying theory independent from legal precedent and the only one whose work has had a wide readership beyond the profession.[18] MacKinnon challenges the assumption that answers are to be found by comparing women to men. She argues that discrimination against women is based on dominance, rather than distinction, and that the key to understanding male dominance lies in the social construction of sexuality from a male perspective.

Legal feminists continued to advocate for formal equality based on their core belief that law was fundamental to women's oppression as well as their freedom. Formal equality was easy to grasp, objective and concrete, and blanketed all areas of civic life. It was theoretically grounded in Aristolean ideals and the intuitive fairness of treating persons similarly situated the same. Moreover, it could be achieved practically at the individual level by women joining the professional ranks in law, medicine, and politics.[19] Feminist legal theory has thus expanded and contracted over time. Starting with the broad comprehensive agenda and methodology of the first woman's rights movement, it narrowed in on a consensus of maternalism. Progressive feminism stretched the theory and agenda back again, with its focus on radical systemic change to laws, systems, and global conflict. Recently, however, a narrower formal legal equality dominated, buoyed by pervasive formal gender inequality leading to a challenge to the use of women's difference as subordination. Formal legal equality proved to be a successful strategy for feminists. Nigerian labour laws may promote the idea of formal equality (treating men and women the same) but fail to address structural inequalities that disadvantage women. Feminist legal theory argues for substantive equality, which considers the lived realities of women in employment. Feminist legal scholars highlight how workplace norms, such as maternity leave policies, wage gaps, and hiring biases, are shaped by patriarchal structures. FLT helps assess whether Nigerian labour laws dismantle or reinforce these barriers.

GENDER GAPS IN THE WORKPLACE

There are quite a number of obstacles confronting women in a bid to achieve full integration at work. These obstacles can be viewed from four different perspective, a socio-cultural context, an economic context, a legal context, and a political context. The socio-cultural factor, which perpetuates gender inequalities, includes patriarchy/male dominance, unequal power relations, harmful traditional practices against women and religious factors. Economic factors include women lack of access to critical resources and low educational attainment among women. The political context is the deprivation of women from wielding political power to participate in the decision affecting their livelihood. While the legal context is from the perspective of labour law trying to adapting to flux in cultural, social context coupled with the changing world of works. This flux includes but not limited to renegotiating between paid and unpaid work, the change from linear life course, reconstruction of marriages, career changes, globalisation, technology advancement, etc.

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[16] A Scales, *Legal Feminism: Activism, Lawyering, And Legal Theory* (NYU Press 2006) 1; M Chamallas, *Introduction To Feminist Legal Theory* (3rd edn, Aspen Publishing 2010) 31-32.

[17] J Williams, 'Deconstructing Gender' [1989] (87) *Michigan Law Review,* 797-845; L Vogel, 'Debating Difference: Feminism, Pregnancy, and the Workplace' [1990] (16) *Feminist Studies*, 9-32.

[18] C A MacKinnon, *Feminism Unmodified* (Cambridge: Harvard University Press 1987); C A MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press 1989).

[19] M C Quinn, 'Feminist Legal Realism' [2012] (35) *Harv. J. Law & Gender*, 6.

Women are, often, disadvantaged compared to men in access to employment opportunities, the condition under which they work, wages, and their access to opportunities for advancement, mechanisms of promotion, women's career cycle, career path, harassment, difficulty in achieving work-life balance, stereotypes, social attitudes and many women forgo or curtail employment because of family responsibilities. Additionally, many companies fail to consider that men and women's career lifecycles are often different. Managers tend to identify high-potential leaders when candidates are aged 30-35. Yet this policy unconsciously eliminates women from the talent pipeline because many have children around this age. In their 40s, when many women refocus on their careers, it is often too late.[20] Thus, their contributions with respect to a greater share of home and family duties in comparison to their husbands are not recognized an arrangement that may lead them to curb ambitions for higher roles. This leads to an imbalance for women to access to managerial positions in the workplace and a need for gender equality.

In *Shell Pet. Dev. Co. v Nwaka*,[21] the court held it to be invidious for it to foist on an employer a person who should occupy a particular position. While in the case of *Abenga v Benue Judicial Service Commission*,[22] the court held that promotion of an employee is neither automatic nor as of right, as such the court will not grant such a relief. However, if there is a finding of a vindictive denial of promotion the court may intervene, in the case of *Mrs. Abdulrahaman Yetunde Mariam v University of Ilorin Teaching Hospital Management Board & anor*[23] held that a vindictive denial of promotion as well as a vindictive suspension are unfair labour practices and so are actionable. It is also important to note that expectation interest in deserving cases may be recoverable by an employee against his employer.

Furthermore, among the prominent issues, bothering on the work experience of female employees is that of harassment at work. Harassment does not generally have an accepted definition. A person or group of people can describe sexual harassment as an unwanted sexual attention, which can be verbal (sexual bantering, comments or leading questions), physical or visual (smirking) behavioural form, or a combination of it. Thus, harassment includes physical, psychological, and sexual aspects. Sexual harassment is a deliberate, continuous unacceptable behaviour and practices that are offensive to the recipient, likely to result in physical discomfort, psychological or sexual harm and an affront to the dignity and self-respect of the victim, it also interference with her job performance. Sexual harassment is gender-based if it stems from unequal power relationships between men and women[24] or if it is perpetrated against, people because they do not conform to socially accepted gender roles. The driving factor for sexual harassment is often the dynamics operating in the world of work and the greater society, including, but not limited to, power relations, gender norms, cultural and social norms, and discrimination.

Section 254C (1) (g)[25] confers on the National Industrial Court the exclusive jurisdiction on matters relating to or connected with any dispute any dispute arising from discrimination or sexual harassment at the workplace. The Constitution does not define "workplace", but examining the definition of "workplace" in the Employee's Compensation Act, workplace is defined to includes any premises or place where a person performs work, needs to be, or is required to be in the course of employment.[26] This definition is broad and can said to cover a professional training course within or abroad, a company sponsored party, an official gathering, a non-workplace parking lot and anywhere else co-workers may socialize and interact as required to be in the course of employment.[27] Sexual

[20] The Guardian, 'When Will Women Achieve Gender Equality in Leadership at Work?' *The Guardian* (Wednesday, 4 June 2014) <https://www.google.com.ng/amp/s/amp.theguardian.com/sustainable-business/women-leadershipcompanies-equality-jobs>accessed 19 March 2025.

[21] [2001] 10 NWLR (Pt. 720) 64.

[22] [2006] 14 NWLR (Pt. 1000) 610.

[23] [2013] 35 NLLR (Pt. 103) 40.

[24] World Health Organization (WHO), 'Promoting Gender Equality to Prevent Violence Against Women - Violence Prevention: The Evidence' <www.who.int>violence> accessed 19 March 2025.

[25] Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

[26] Employee's Compensation Act 2010

[27] *Lapka v Chertoff*, 517 F.3d 974 (7th Cir. 2008); *Ferris v Delta Airlines, Inc.,* 277 F.3d 128, 135 (2nd Cir. 2001); *Doe v Oberweis Dairy*, 456 F.3d 704, 715–16 (7th Cir. 2006); *Moring v Arkansas Department of*

harassment in the workplace amounts to unfair labour practice[28] and a human right issue. The act of sexual harassment not only threatens their job security but also an affront to the dignity and self-respect of the victim, socially stigmatise the victim in the workplace. The act of sexual harassment in the world of work is unacceptable and, incompatible with decent work; it hinders the effective contribution of women to the society by limiting their economic potentials at work and prevents women from entering the labour market, especially in male-dominated sectors and jobs, and remains therein. It also affects workplace relations, worker engagement, health, productivity, quality of public and private services, and enterprise reputation.

In examining the current trends in sexual harassment at the workplace, the first award given for sexual harassment in the workplace under the dispensation of the Third Alteration to the Constitution is the case of *Ejieke Maduka v Microsoft Nigeria Limited & ors*.[29] The case is a fundamental rights suit under sections 32 and 42 of the CFRN and the African Charter on Human and People's Right (Ratification and Enforcement) Act. Due to the absence of legislation on sexual harassment in Nigeria, the following two conventions ratified by Nigeria (United Nations Convention on The Elimination of All Forms of Discrimination against Women (CEDAW) and ILO Discrimination Convention), were used by the court as a guide to interpret the applicant's constitutional rights and determine the rules applicable to sexual harassment. The court held in the case, that sex harassment constitutes assault and trespass on the person of the victim/applicant.

The second sexual harassment is *Pastor (Mrs) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria & anor*.[30] The National Industrial Court (NIC) judge ordered the payment of the sum of N5,000,000.00, for sexually harassing the claimant, discrimination against her, inhuman and executive recklessness of the 2nd defendant, thereby creating a hostile working environment for the claimant and for the violation of her human dignity and self-worth/respect.[31] The termination of the claimant's employment, simply because she refused to succumb to sexual harassment from 2nd defendant constitute a violation of her human dignity and freedom from discrimination as protected by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, and against the claimant's fundamental human right under the 1999 Constitution as amended.

None of the labour laws in Nigeria expressly contain any provision prohibiting or protecting workers from sexual harassment. In fact, the Labour Act contains no provision prohibiting sexual harassment or any kind of harassment during employment. Aside section 9 of the Employees Compensation Act 2010 which provides for compensation to an employee for mental stress which is the result of a sudden and unexpected traumatic event arising out of or in the course of employment,[32] there is no other domestic legislation having such a protective provision. Thus, no one would reasonably argue to the contrary that the act of sexual harassment is capable of leading to mental stress.

THE EFFECTIVENESS OF NIGERIAN LABOUR LAWS

The legal framework governing women and their employment in Nigeria is comprised mainly of two key instruments: the Constitution of Federal Republic of Nigeria and the Labour Act 2004.

The Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of Nigeria is the principal law of Nigeria. Section 17(2) of the Nigerian Constitution, 1999, provides that every citizen shall have equal rights, obligations and opportunities under the law. Chapter IV of the CFRN provides for different fundamental human rights.[33] The rights include the right to life, dignity, personal liberty, private and family life, to freedom from discrimination, and the right to freedom of expression and the press, among other rights. Section 42 of the Nigerian Constitution, 1999 specifically prohibits discrimination on the grounds of sex, among other grounds.

Correction, 243 F.3d 452 (8th Cir. 2001); *Dowd v United Steelworkers of America* 253 F.3d 1093 (8th Cir. 2001).

[28] Section 254C of the Constitution confers on the National Industrial Court the exclusive jurisdiction on matters relating to or connected with any dispute pertaining to unfair labour practice.

[29] [2014] 41 NLLR (Pt. 125) 67.

[30] Suit No. NICN/LA/673/2013

[31] Ibid.

[32] T A O Tugbiyele, *Labour Laws and Practice* (T. A. O. Yugbiyele & Co 2012) 210.

[33] CFRN 1999 (as amended) ss 33 to 44

According to Oyewunmi, the freedom from discrimination in the workplace based on sex appears to be binding only between the government and the citizens thus leaving out the relationship between individuals.[34] However, the Third Alteration of the Nigerian Constitution[35] introduced the second generation, socio-economic rights. Thus, rather than merely protecting citizens against the abuse of state power, the latter rights widened the scope to bind not only government and citizens but also the relationships between employers and employees by obligating the state to do as much as it can to protect all members of the society.[36] Therefore, making labour law rights justiciable and directly enforceable, thereby bringing individual relationship within private sphere to be regulated by public law in order to balance the individual relationships.[37] Nevertheless, section 42 of the CFRN at best is a blanket provision; there still remains the need for specific anti-discrimination provision and affirmative action in the Nigerian Constitution. According to the provisions of section 13 of the Constitution, it is the duty of all organs of the government, all authorities and persons exercising legislative, executive or judicial powers to conform to the provisions of the Constitution.

Labour Act 2004

This is the principal law that governs labour relations in Nigeria. The Labour Act (LA) is divided into four parts. Part one deals with wages, contracts of employment and conditions of employment; part two regulates recruitment generally; part three covers special classes of workers and special provisions and part four deals with supplementary issues which includes settlement of disputes, administration, records and returns. Section 23 to 25 of the LA provides for the need for recruiters to be licensed or to have an employers' permit. The recruitment provisions of the Labour Act are basically an off shoot of the colonialism that Nigeria was previously under. The Labour Act has no provisions for equal employment opportunities for all Nigerians irrespective of any diversity for example sex, ethnicity etc; neither does it deal with retention at work. The only provision in this Act that relates to women is in respect of maternity leave, there is no provision that seeks to protect the interest of women during recruitment and upon assumption of employment. Issues that make the workplace mentally and emotionally hostile to the minority are not provided for in the Act.

Women employed in any public or private industrial, a woman has the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within 6weeks. Maternity leave commence 6 weeks before the expected day of delivery and 6weeks after delivery.[38] The women must not be permitted to work during the six weeks following her confinement. If the pregnant employee had been in continuous employment by her then employer for a period of six months or more immediately prior to her absence on confinement she must be paid not less than fifty per cent of the wages she would have earned if she was absent.[39] The practice in both the public and most organisation of the private sector pay the pregnant employee's full wages during the maternity leave period. An employer is not liable, in his capacity as an employer, to pay any medical expenses incurred by a woman during or because of her pregnancy or confinement.[40] When the woman resumes work after the maternity leave, she is entitled to nurse her baby twice in a day for half an hour each.[41] The practice in most private and public organisation is the employer allows the nursing mothers to close from work an hour earlier, some for a period of three months and others for a period up to six months.

Where a woman is on maternity leave, absence from her work for the twelve weeks should not be a ground of dismissal. Where she also remains absent from her work after the expiration of the maternity leave for a longer period as a result of illness certified by a registered medical practitioner, which arose out of her pregnancy or confinement and to render unfit to work, no employer shall give

[34] A Oyewunmi, 'The Promotion of Sexual Equality and Non-Discrimination in the Workplace: A Nigerian Perspective' [2013] (13) *International Journal of Discrimination and the Law*, 324-347.
[35] Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010
[36] Ibid, s 254
[37] Ibid, s 214
[38] Labour Act 1974, s 54 (1) (a) and (b)
[39] Ibid, s 54 (1) (c)
[40] Ibid, s 54(3)
[41] Ibid, s 54(1) (d)

her notice of dismissal during her absence.[42] According to the National Industrial Court a woman's right to maternity leave belongs to every pregnant woman either married or unmarried who is working in any public or private industrial undertaking, or in any agricultural undertaking. The maternity leave commences 6weeks before the expected day of delivery and 6weeks after delivery; this is irrespective of the temporary or confirmed nature of her job. In *Mrs Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative*,[43] the applicant, a woman, had her employment terminated for being pregnant. The court applied section 42 of the Nigeria's Constitution, the African Charter on Human and Peoples' Rights[44] and the ILO Convention 111 on Discrimination. It held the termination to be wrongful and unconstitutional and awarded compensation to the tune of Five Million, Five Hundred and Seventy - Six Thousand, Six Hundred and Seventy Naira (N5,576,670.00) being one year's full gross pay. The applicant did not seek reinstatement, so the court did not consider it. It is also important to note that a breach of maternity protection provision is a criminal offence. Where the employer, owner, or manager of the industry, organisation, or agricultural undertaking contravenes any provision of the maternity protection is guilty of an offence and liable on conviction to a fine not exceeding N800 or to imprisonment for a period not exceeding three months or to both.[45] This provision does not reflect the modern day reality with respect of the stipulated fine; this provision needs to be amended to meet with the present day reality.

Employability discrimination is another form of unhealthy employment practice against women. Unfortunately, this discrimination enjoys tacit statutory backup. For instance, section 55(1) of the Labour Act prohibits female employees from working at night in any public or private establishment except those employed in the capacity of nurses or holding responsible position of management who are not directly engaged in manual labour. However, where it could be proved that the engagement in night work in the way and manner prohibited here was due to unforeseen circumstances not of a reoccurring nature, or night work was engaged in order to protect or process raw materials which are subject to deterioration, which was necessary to be preserved from certain loss, such would be a defence against an action in breach of the section.[46] This notwithstanding, the Minister of Labour, Employment and Productivity may by order exclude from the application of the prohibition, those women covered by a collective agreement in force which permits night work for women, but before making such an order the Minister shall satisfy himself that adequate provision exists for the transportation and protection of the women concerned.[47] Also, section 56 (1) of the LA prohibits females from being employed in underground work in mines except in management position, employed in health and welfare services, or those so employed for the purpose of study. This restriction on where women could work contravenes article 13(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which enjoin member states to guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognized by conventions, laws and regulations in force. While these provisions appear to be protective in nature, on a flipside, they are actually discriminatory.[48] By prohibiting women from engaging in night work save in the capacity so expressly provided, the section restricts the sphere of female employees' prospects.

Furthermore, section 34(1) of the Labour Act empowers men who are recruited for service to take members of their family not exceeding two wives and children below sixteen years to their place of employment. Women are also recruited for same service yet, there is no equivalent provision in the Labour Act empowering women who are also recruited for service to take their husbands and children to their places of employment. Women should have the discretion to choose whether to engage in a particular work or not. Furthermore, there is no legal provision addressing discrimination in wages and work benefits, even though this form of discrimination against women is persistent in the

[42] Ibid, s 54(4)
[43] [2012] 27 NLLR (Pt. 76) 110
[44] African Charter on Human and Peoples' Rights (Ratification and enforcement) Act Cap. A9 LFN 2004
[45] Labour Act 1974, s 55(3)
[46] Ibid, s 55(1) (2) (a) (b).
[47] Ibid, s 55 (5).
[48] A T Tinuoye, 'Human Rights, Workers Rights and Equality in the Nigerian Workplace: An Overview' [2015] (5)(17) *Developing Country Studies,* 99.

Nigerian workplace.[49] Similarly, sexual harassment is a plague in the Nigerian workplace.[50] Females are specifically recruited to be marketers, with such workers having mainly to source wealthy clients or customers to meet high targets set by employers. This has made many employees susceptible to exploitative sexual advances, and is particularly prevalent in the Nigerian banking sector.[51] This statutory provisions, are antithetical to the provisions of article 2 (a) of CEDAW which enjoin nations to enact laws that embody the principle of the equality of men and women in their national constitutions or 4 other appropriate legislations and to refrain from any engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with the non-sexual discrimination policy.[52] Also, these discriminatory provisions obliterates from the provisions of article 19 of African Charter on Human and Peoples' Rights (ACHPR) which provides that all people shall be equal, they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.[53]

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983

The African Charter on Human and People's Rights (ACHPR) is a legal instrument adopted in 1981 by the African Union. It promotes and protects human rights in the African continent. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is the domesticated version of the charter recognised in Nigeria. The Charter's provisions were domesticated, making them enforceable in all Nigerian courts. One of the key provisions of the Charter is its regulation of gender equality, which is addressed in various articles and protocols. The African Charter frowns against discrimination based on sex, promotes equality before the law,[54] and elimination of discrimination against women. All humans are entitled to the enjoyment of the freedoms and rights recognized and guaranteed in the Charter, regardless of their race, ethnic group, color, sex, language, religion, political or any other opinion, as well as their national and social origin, fortune, birth, or other factors.[55] This article establishes a principle of non-discrimination, which is fundamental to promoting gender equality.[56] It prohibits discrimination against women and girls based on their sex and requires State parties to take measures to eliminate such discrimination.[57]

The Charter further provides for the right to equality before the law and equal protection of the law.[58] This article reaffirms the principle of non-discrimination and requires state parties to ensure that women and girls have equal access to justice and are not discriminated against in legal proceedings. Additionally, the Charter acknowledges the right to work and declares that everyone has the right to work in decent conditions with fair remuneration for comparable work.[59] This article forbids sexism in the workplace and acknowledges that women and girls have the right to a job and a living wage.

INTERNATIONAL LEGAL FRAMEWORKS RATIFIED BY NIGERIA

Nigeria as a member of the International Labour Organisation signed certain conventions such as the Equal Remuneration Convention 1951 No. 100 on the 8th day of May 1974 and the Discrimination (Employment and Occupation) Convention 1958 No. 111 on the 2nd day of October 2002. In

[49] A Oyewunmi, 'The Promotion of Sexual Equality and Non-discrimination in the Workplace: A Nigerian Perspective' [2013] (13)(4) *International Journal of Discrimination and the Law*, 324.

[50] A D Aina-Pelemo and others, 'Sexual Harassment in the Workplace: Case Study of the Nigerian Legal Sector' [2019] (86) *Journal of Law, Policy&Globalization*, 121; O C Okongwu, 'Are Laws the Appropriate Solution: The Need to Adopt Non-policy Measures in Aid of the Implementation of Sex Discrimination Laws in Nigeria' [2021] (21)(1) *International Journal of Discrimination and the Law*, 26.

[51] F F Akinfala and T Komolafe, 'Sexual Harassment as a Predictor of Organisational Outcomes' [2017] (20)(1) *African Journal for the Psychological Study of Social Issues*, 60.

[52] Convention for the Elimination of all forms of Discrimination Against Women 1981, art 2(a)(d).

[53] Protocol to the African Charter on Human and Peoples' Rights of Women in Africa 2003, art. 1(f).

[54] ACHPR 1983, art. 3

[55] Ibid, art. 2

[56] M I O Nwogu and A N Okonkwo, 'Cultural and Legislative Constraints Militating Against Women's Rights in Nigeria: The Way Forward for a More Inclusive Protection' [2023] (14)(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* 42-53.

[57] ACHPR 1983, art. 18(3)

[58] Ibid, art. 3

[59] Ibid, art. 15

addition, Nigeria ratified the United Nations Convention on the Elimination of all Forms of Discrimination against Women on the 13th June, 1985. The optional protocol of this convention was equally ratified on 8th September, 2001. To date, this convention has also not been domesticated. Unfortunately, conventions will have no effect until domesticated into an Act by the legislative houses in accordance to section 12 of the Constitution. The Supreme Court of Nigeria in the *Registered Trustees of National Association of Community Health Practitioners of Nigeria&2others v Medical and Health Workers Union of Nigeria and others*[60] said that an international treaty signed by the Nigerian government that has not been domesticated into law by the legislative houses is not binding. This decision was in reaction to the plea of the court that the provisions of convention 87 and 89 of the International Labour Organisation be applied in the instance case.[61]

ILO Equal Remuneration Convention 1951 No. 100

The ILO Equal Remuneration Convention analyses one of the main effects of discrimination: unequal remuneration between men and women.[62] In fact, the Equal Remuneration Convention pursues the specific goal of eliminating this particular form of discrimination, affirming the fundamental principle that every worker - man or woman has the right to receive an equal remuneration for work of equal value "without discrimination based on sex."[63] To guarantee the effectiveness of this principle, member states that ratify the Convention have to promote the necessary changes in "national laws or regulations," in the "legally established or recognised machinery for wage determination," and in the "collective agreements between employers' and workers'" organizations.[64] The Convention's scope is broad and covers a wide range of workers and types of remuneration received. First, as the Committee of Experts on Application of Conventions and Recommendations (Committee of Experts) stressed, the Convention should be applied to all workers, which means that a member state's exclusion of some categories would diverge with the Convention's aim. Second, the Convention contains a concept of remuneration that is also very general. Remuneration is defined by the Convention to "include the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment."[65]

In fact, the Convention permits a disparity in remunerations if two jobs are objectively of different values.[66] Furthermore, the matter of equal remuneration is connected with the distinction between direct and indirect discrimination and with the problem of work segregation.[67] In spite of its broad coverage, the Equal Remuneration Convention concerns only one object of discrimination – remuneration and only one reason for it - the sex of the worker.

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Seven years after the adoption of the Equal Remuneration Convention, the ILO's role in elaborating antidiscrimination rules increased with the decision of the International Labour Conference to discuss a general instrument to combat workplace discrimination. The result of this discussion was the Convention No. 111, the Discrimination (Employment and Occupation) Convention, 1958.[68] To date, this Convention is the most important antidiscrimination tool of the ILO because of its potentially universal coverage with respect to the various forms of discrimination and the reasons for discrimination.[69]

Convention No. 111 provides the definition of discrimination, establishing that this term includes "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion,

[60] [2008] 2NWLR (Pt. 1072) 575

[61] *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 288.

[62] Convention (No. 100) Concerning Equal Renumeration for Men and Women Workers for Work of Equal Value, art. 2, 165 U.N.T.S. 303, ILO, 34th Sess. (June 29, 1951) (entered into force May 23, 1953)

[63] Ibid, art. 1(b).

[64] Ibid, art. 2(a)–(c).

[65] Ibid, art. 1(a).

[66] Ibid, art. 3.

[67] Ibid, art. 1(a)

[68] Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation, pmbl., 362 U.N.T.S. 31, ILO, 42d Sess. (June 25, 1958)

[69] C Thomas, 'Information Sources and Measures of International Labor Standards on Employment Discrimination' [2003] (24) *Comp. Lab. L. & Pol'y J.*, 366–367.

national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."[70] In addition to showing the general coverage of the Convention regarding reasons of discrimination, the definition is also flexible. In fact, in article 1, the International Labour Conference introduced a provision that admits the possibility of adapting the coverage of this Convention to new forms of discrimination by embracing the concept that "such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies."[71] The Convention specifies its exact coverage in relation to the possible objectives of discrimination in article 1, which affirms that the scope of the Convention includes both employment and occupation discrimination.[72]

Convention No. 111 provides some exceptional cases, which are not to be considered as discrimination. There is a general exception, provided by article 1, which affirms that "[a]ny distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination."[73] Article 4 of the Convention provides for another exception, establishing that national measures taken to guarantee the security of the member state against individuals who threaten that security cannot be considered discrimination.[74] Article 5 provides a further category of exceptions, referring to special measures to protect some groups of workers. Article 5 points out that measures of this kind, established by other acts of the International Labour Conference, shall not be considered discriminatory. The Convention also provides flexibility by establishing that individual member states can determine measures to protect particular categories of workers that need this protection for reasons such as sex, age, or disability.[75] These measures of protection shall not be considered discrimination.[76]

Articles 2 and 3 of the Convention are the most important provisions. They specify the role of each ratifying member state in combating workplace discrimination and in promoting equality of treatment. To reach this goal every associated country has the task of developing a specific national policy. The contents of this policy must be consistent with the different measures the Convention requires each member state to carry out. First, the member state has to promote "the co-operation of employers' and workers' organisations and other appropriate bodies" to improve the acceptance and efficacy of that policy.[77] On the legal level, the member states must approve specific statutes and adopt appropriate educational programs to combat discrimination and, at the same time, repeal legislation and administrative instructions or practices in conflict with that policy.[78] Finally, states must apply the antidiscrimination "policy in the activities of vocational guidance, vocational training and placement services."[79] It is important to point out, in the context of the implementation of this antidiscrimination policy, that the member state has "to indicate in its annual reports on the application of the Convention the action taken . . . and the results secured by such action."[80]

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

This Convention was adopted by the General Assembly of the United Nations in 1979. The Convention is often described as an international bill of rights for women.[81] This Convention consists of a preamble, six parts and 30 articles. The importance of this Convention is hinged on the fact that it brings the female half of humanity into the focus of human right concerns. These human right concerns are as provided on the United Nations' Universal Declaration of Human Rights. The preamble of this Convention, acknowledges the fact that extensive discrimination against women exists and this discrimination is in breach of the principles of Equality and respect for human dignity.

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[70] Convention (No. 111), art. 1.
[71] Ibid, art. 1.
[72] Ibid
[73] M Tomei, 'Discrimination and Equality at Work: A Review of the Concepts' [2003] (142) *Int'l Lab. Rev.*, 405–406.
[74] Convention No. 111, art. 4
[75] Ibid, art. 5
[76] Ibid.
[77] Ibid, art. 3(a).
[78] Ibid, art. 3(b)–(c).
[79] Ibid, art 3(e); H Bartolomei De La Cruz and others, The International Labor Organization: The International Standards System and Basic Human Rights (Westview Press 1996) 274.
[80] Convention No. 111, art. 3(f).
[81] United Nations, 'Women Watch'<www.un.org/womenwatch/cedaw> accessed 19 March 2025.

Article 1 of this Convention 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 other 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". Thus, any differentiation against women by virtue of their sex is discrimination. The Convention also makes it binding on state parties to take appropriate measures to ensure equality of women with men. This is provided for in Article 3. The agenda for equality is specified in articles 3 to 14 of the Convention. These articles deal with socio-cultural, political, economic, education and reproductive rights of a woman in a bid to eliminate any form of discrimination and enhance equality.

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). Articles 17 to 30 deal with the mandate of the committee to ensure the administration of this Convention by State parties. The Committee is made of twenty-three experts who are nominated by countries and elected by the States parties. State parties are bound to submit a national report to the committee every four years indicating their progress in the journey to eliminate discrimination against women. Unfortunately, this has not been enforced in Nigeria. Wherein after signing this convention as a State party, Nigeria government has not made any effort to domesticate this convention.

CONCLUSION

Gender equality and women's empowerment is a way of reducing poverty levels within the family, improving the standard of living. Despite Nigeria's government seeming effort in promoting sexual equality and nondiscrimination in the workplace, there are still discriminatory challenges confronting women in the workplace. The paper reveals that gender discrimination remains a significant challenge in Nigerian workplaces, despite legal provisions intended to promote equality. Women continue to face wage disparities, limited career advancement, and gender-based biases in hiring and promotions. The Nigerian Labour Act and the Constitution provide some protections, but these are often inadequate, leaving women vulnerable to discrimination. Legal gaps, such as the absence of explicit anti-harassment laws and weak enforcement mechanisms, further exacerbate workplace inequalities. Additionally, cultural and socio-economic factors, including patriarchal norms and limited access to resources, contribute to systemic discrimination. While Nigeria has ratified several international conventions, such as CEDAW and ILO Conventions on Equal Remuneration and Discrimination, these have not been effectively domesticated into national law, reducing their impact on workplace policies and practices.

RECOMMENDATIONS

Legal protections remain largely theoretical due to poor enforcement, cultural biases, and inadequate legal frameworks.

1. Legislative Reform; there is need for comprehensive legislative reforms, including the explicit prohibition of workplace harassment and stronger mechanisms to enforce equal pay and career advancement opportunities for women.
2. Strengthening institutional frameworks and increased awareness on gender equality adopting a substantive equality approach - recognising the structural disadvantages faced by women, could help bridge the gender gap in employment.
3. Fostering a workplace culture that actively promotes gender inclusion andparticipation in Workplace will promote workers participation and improve their attitudes to work are crucial steps toward achieving true workplace equality in Nigeria.
4. Workplace equality can also be achieved only if measures are taken to eliminate rules that directly discriminate against people belonging to subordinate groups and to remove the disadvantages that constitute the deepest reasons for the discrimination. These measures must focus on either the workplace or the access of disadvantaged groups' members to education and training, as affirmed in Convention No. 111. The described measures are collectively termed "affirmative action," which can be defined as "a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality." Affirmative action, as clearly affirmed by the ILO, is compatible with international labour law.