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ABOUT THE JOURNAL

KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ) is the official journal of the School of Law, Kampala International University. It is a peer-reviewed journal providing distinctive and insightful analysis of legal concepts, operation of legal institutions and relationships between law and other concepts. It is guided in the true academic spirit of objectivity and critical investigation of topical and contemporary issues resulting from the interface between law and society. The result is a high-quality account of in-depth assessment of the strengths and weaknesses of particular legal regimes with the view to introducing reforms. In furtherance of the requirements of advanced academic scholarship, the Journal places high premium on originality and contribution to knowledge, plain and conventional language, and full acknowledgment of sources of information among other things. It is superintended by a Board of respected academics, lawyers, and other legal professionals.

The Journal offers useful reference material to legal practitioners, international organisations, non-governmental organisations and the academia. It also provides multipurpose policy guide for the government.

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All correspondences are addressed to:

The Editor-in-Chief

Kampala International University Law Journal,
School of Law,
Kampala International University,
P.O. Box 20000 Kampala,
Uganda.

valentine.mbeli@kiu.ac.ug

Tel: (+256) 0706970595

Website: www.kiulj.kiu.ac.ug

Scope

Kampala International University Law Journal (KIULJ) is the official Journal of the School of Law, Kampala International University, Uganda. It is a peer-reviewed Journal providing an objective and industry focused analysis of national and international legal, policy and ethical issues. The Journal publishes well researched articles that are in sync with sound academic interrogation and professional experience on topical, legal, business, financial, investment, economic and policy issues and other sectors.

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FROM THE EDITORIAL SUITE

The primary objective of the **KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)** is to provide as platform for a robust intellectual discourse, through the publication of incisive and insightful articles and other contributions from a variety of scholars, jurists and practitioners across jurisdictions. The desire to accomplish this objective guides the choice of the materials being presented to the reading public in every edition. The peer review and editing processes of the papers that are finally selected for publication are equally influenced largely by the pursuit of this goal.

To this end, articles from seasoned scholars and practitioners in each edition address a wide spectrum of issues from different branches of the law, such as, International Criminal Law, Law of International Institutions, Environmental Law, Human Rights Law, Medical Law, Oil and Gas Law, Constitutional Law, Corporate Governance to mention but a few. You will, no doubt, find these scholarly works a worthy contribution to knowledge in their respective fields.

On behalf of the Editorial Board, I wish to appreciate all our reviewers, internal and external, for their constructive criticisms, comments and suggestions. These go a long way to enrich the quality of the papers published in this Journal. The various contributors who painstakingly addressed the observations and suggestions of the reviewers, thus facilitating the achievement of the purpose of the review process also deserve our commendation.

We also, with a grateful heart, acknowledge the interest our teeming readers have continued to show in the succeeding editions of the journal just as we assure them of our readiness to give them the best always. We equally thank our editorial consultants for their useful advice and comments that have contributed to the continuous improvement of the quality of the journal. Legal practitioners and scholars are hereby informed that contributions to our journal are received on a rolling basis. They should feel free to send in their manuscripts and ensure they comply with the submission guidelines as spelt out in the Call for Papers obtainable from the journal's website (www.kiulj.kiu.ac.ug). All contributions should be addressed to the Editor-in-Chief and forwarded to the email addresses supplied in this edition.

VALENTINE T. MBELI (Ph.D.)

Editor- in- Chief.

e-mail: valentine.mbeli@kiu.ac.ug

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GENDER DISCRIMINATION AND THE INTERNATIONAL DIVISION OF LABOUR: A LEGAL APPRAISAL

O. F. OLUDURO* & Y. F. OLUWAJOBI**

Abstract

Access to employment and income opportunities for women is a fundamental right. Employment is a source of self-esteem, social standing and human dignity. Discrimination in the work place denies women of this fundamental right. Gender discrimination targeted mostly towards women is a violation of civil rights, and comes in the form of unequal access to education and health care, unequal pay, sexual harassment, pregnancy discrimination, glass ceiling, board room discrimination and such likes. The Nigerian Constitution provides for the protection of women in every stratum and the Labour Act covers labour conditions for women. Unfortunately, the provisions are scanty and grossly inadequate, just as the available provisions are scarcely enforced. At the international level several treaties have been made to address gender imbalance in the work place, but developing countries still significantly lag behind in the provision of this fundamental right. This article seeks to analyze the effects of gender inequality in the workplace vis-à-vis the legal and institutional frameworks; assess the effects of discrimination on women's output in the workplace; appraise gender discrimination in the workplace; analyze the national laws and international instruments that constitute the legal frameworks for the protection of women in the work and finally recommendations for employers and policy makers on gender related issues.

Keywords: Gender; Discrimination; Labour; Harassment; Legal Framework; Elimination; Protection.

Introduction

Discrimination is part of our lives. It could manifest in several forms; in the form of race, colour, sex, religion, political opinions beliefs and so on.¹ Discrimination may be overt or covert, open or closed. The definite thing is that discrimination is part of

* Senior Lecturer in the Department of Public Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria with research interests in Environmental Law and International Labour Law. E mail: oluduro2003@hotmail.com

** Doctoral candidate, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria. E mail: oluwajobiyewande@gmail.com

¹ M Busse and C Spielman, "Gender Discrimination and the International Division of Labour" (2003), HWWA Discussion Paper; <<https://ideas.repec.org/p/zbw/hwwadp/26157.html>> accessed June 2020.

everyday living and is unlikely to go away anytime soon. The Black's Law Dictionary described Discrimination as:

*The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race age, sex, nationality, religion or handicap*²

It may further be described as a:

*Differential treatment, especially failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.*³

Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defined gender discrimination 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 of exercise by women, irrespective of their mental status, on the basis of equality of man and woman of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any field.*⁴

Abdullahi Garba Kangiwa expounded it further by saying:

*Historically, inequality exists between men and women; women have been either historically denied access to or granted unequal access to economic opportunities, power, status and privileges in society. Women experience unequal access to resources and decision-making processes with limited mobility in most countries. Women are under-represented in almost every sphere of social life such as politics, commerce, agriculture, industry, the military, religious and educational institutions.... In Nigeria, in spite of several women rights outlined in the 1999 Constitution, many women do not enjoy the same freedom as men, particularly in the fields of education, economic empowerment and political participation.*⁵

In the last few years, progress had been made in women's participation in all the strata of the society and in the economic sector of nations. Yet with all the changes, women still have to grapple with inequalities everyday of their lives; from their workplace, to religious organizations, and then to the society at large. On the positive side, unlike what obtained some years ago, a large percentage of women

² B. A. Garner, Black's Law Dictionary (8th Ed), St. Paul, MN Thomson West (1999) 500.

³ See *Craig v Boren* [1976] US 190.97, S Ct 451.

⁴ Article 1 of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1981.

⁵ A.G. Kangiwa, "Gender Discrimination and Feminism in Nigeria" [2015] Vol III (Iss.7) IJECM (UK) 752.

have come to the workforce bringing a little shift to the general attitude to women's rights all over the world. However, the increase in women's participation in work and education had only led to the emergence of debates about 'unfinished,' 'incomplete,' or 'stalled' gender revolution.⁶

Discrimination in the area of employment occurs when a person is treated unfairly on the basis of his or her sex or sexual orientation(s) and manifest at different stages of employment. Gender discrimination normally starts from the hiring process, extending to training, recruiting, promotion, discipline, workplace opportunities, performance appraisal, wages and termination of appointment. It was reported that:

The gender wage gap is revealed in figures that show that, as of 2009, on average women earned 17% less than men, the largest gap in 28 years, with some industries like insurance and finance recording a gap of 32% and A study by the Parliament of Australia (2009) attributed the difference between men's and women's pay to women's disproportionate participation in part-time and casual employment; which leads to less work advancement and skill development for women than for men, a concentration by women in low paying jobs, social expectations about the role of women as workers, parents and carers' that positions them in unpaid work; and working in service rather than product-related markets.⁷

The above study captured discrimination that women face during the hiring process and in the place of work when she is eventually employed; during job appraisals or development opportunities; as well as issues of sexual harassment at work. Discriminations occur in four major areas such as discrimination in education; health opportunities; economic opportunities; and political opportunities.

A. Discrimination in Education

Women in most developing countries suffer from literacy deficiencies and limited school enrolment. There is little or minimal exposure to quality education and training. Poor literacy rates and societal barriers will definitely hinder women from participating in the labour force, since education is the passport to being gainfully engaged in the labour market. When a girl child is not educated, her chances in life are few and inevitably her employment opportunities are likely to be limited as "education not only boost women's morale but also considerably change their economic independence and role in the family".⁸ Buvinic observed that "If you

⁶ H. Cuervo et al, "Gen X Women and the Gender Revolution: Pioneers or Traditionalists?" (2012) Research Report 36, YRC University of Melbourne, 1-24.

⁷ *Ibid.*, 4.

⁸ H Ross, "Female Education and Development in Asia" (1999) CER, University of Chicago Press Vol.43, No.1, 110-116.

educate a boy, you educate a human being, if you educate a girl, you educate generations".⁹

In some developing countries, the girl child is not sent to school but rather is trafficked for cheap labour and prostitution; thereby limiting her chances of future economic independence.

B. Discrimination in Economic Opportunities

Discrimination occurs at the entry level as well as during employment for women. When women are discriminated against during the recruitment stage, it hampers their chances because employment would lead to improvement of their status.¹⁰ Over the years, some roles have been traditionally attributed to women such as house job, taking care of the children and other domestic works, which make women largely dependent on their husbands and subservient to them.¹¹ This is true "as poverty is a result of as much lack of power and of material resources, empowerment of women and other deprived groups is a precondition to breaking the vicious circle of poverty and voiceless status."¹² Therefore, economic emancipation of women is very crucial in the struggle for gender equality. An economically dependent wife or daughter lacks the resources and stamina that will enable her to agitate for her rights or that of others.¹³

C. Discrimination in Health Opportunities

Where women lack access to good health facilities, their output at work would be low. Countries without adequate health provision system have increased mortality rate among women. It is important for women to have access to antenatal care and family planning clinics as a woman cumbered or weighed down by large number of children may not be able to work effectively. Developing countries tend to have higher rates of maternal mortality due to access to good healthcare during pregnancy or child birth. It was argued that "empowerment of women has to go further than mere instrumentalism and starts with first addressing questions of women agency, their comfort and self-worth, and then that of their families and communities."¹⁴

⁹M Buvinic, "Women in Poverty: A New Global Underclass" Washington Post New Week Interactive, (1997) LLC 4 (108) 38-53.

¹⁰ Shah et al, "Structural Adjustment, Feminization of Labour Force and Organizational Strategies" (1994) Economic and Political Weekly 18(29) WS39-WS 48.

¹¹ Ifemeje and Ogugua, cited in O. Owoyemi and O. Olusanya, "Gender: A Precursor for Discrimination Against Women in paid Employment" (2014) Vol 3 (No1) AJMB 10-14 <<http://www.world.scholar.ng>> accessed July 2017.

¹² M. Acharya and Ghimire, "Gender Indicators of Equality, Inclusion and Poverty Reduction: Measuring Programme/Project Effectiveness" (2005) EPW (44/45(40) 4719-4728.

¹³ Ifemeje and Ogugua op cit.

¹⁴ Kelkar, "Development Effectiveness Through Gender Mainstreaming: Gender Equality and Poverty Reduction in South" (2005) EPW44 145 (40) 4690-4699.

D. Discrimination in Political Opportunities

Women's involvement in politics is vital and important, their involvement would influence decision-making on crucial matters affecting the female population. Even though in most countries women have been given the right to vote, they are excluded from running for political offices. The exclusion may be overt such as laws that expressly prohibit women from holding public offices or lack of enabling environment to contest. It could also be covert such as cultural inhibitions and practices that exclude women from aspiring to hold public offices and/or compete freely in sporting activities among others.¹⁵

Contributory Factors to Gender Discrimination

Some of the factors of gender discrimination include cultural and societal factors; religious constraints; psychological constraints and biological constraints. Each of these will be addressed below:

Cultural and Societal Factors

Many African societies are patriarchal in nature with the man being seen as the head of the family who is to provide for the family. In such societies, male children are preferred to their female counterparts.¹⁶ The situation of girls in most developing countries is dire as women are considered as second-class citizens and are accorded little honour above the servants. Such women are often saddled with huge responsibilities making it difficult for them to improve themselves academically or otherwise. While male children are conditioned from birth to aspire and aim higher, girls are conditioned to be home-keepers. This anomaly starts from the crèche where boys are given toys like machine gun, cars, bikes and girls are given dolls, pots, and so on to play with. It is a gradual process whereby a child is conditioned from birth to accept the place that society had placed him or her. The society conditioned one that a man is to have jobs and to earn more salary than the woman, since it is assumed that the man would care for the woman.

Religious Constraints

The teachings of many religious organizations constrain women and bring about gender discrimination, women are taught to submit to their husbands and be good home keepers. The Holy Bible restrains women from speaking in church on the ground that Adam was not deceived but Eve.¹⁷ Islamic teachings restrict women in purdah and most Islamic countries adhere strictly to Islamic teachings, for example,

¹⁵ Hassan Ammar, 'What Are Women Banned from Doing in Saudi Arabia?' (The Week online, Thursday 23rd January 2020) <<https://www.theweek.co.uk/60339/things-women-cant-do-in-saudi-arabia>> accessed June 2020.

¹⁶ O Owoyemi and O Olusanya, 'Gender: A Precursor for Discrimination Against Women in Paid Employment' (2014) Vol 3 (No 1) AJBM Vol.3 No.1, 10-14 <<http://www.worldscholar.org>> accessed June 2020.

¹⁷ *Ibid*, See also 1 Corinthians 14: 34 in F. J. Dake, 'Dake's Annotated Reference Bible,' Lawrenceville, 2013.

Saudi Arabia banned women from working without written consent of father or husband and where such consent is not given, she cannot be employed, Saudi Arabia just passed a law allowing women to drive on the 26th of September 2017.¹⁸ Coordinated crackdowns on supposed dissidents, human rights activists and others are still being intensified even currently by many Islamic states including Saudi authorities.¹⁹

Psychological Constraints

There is always an unseen battle of supremacy between a man and a woman. According to Owoyemi and Olusanya:

*Existing career women, who are meant to be role models, are not interested in teaching other women how to develop and establish themselves. Such women ... are labeled 'Queen Bees.' Queen Bees are professional women, who on account of their success have become 'anti-feminist.' For women, a job is merely a 'stop-gap' between school and marriage, (however, not in all cases). Women have the characteristics of compromising their abilities and interests, when faced with conflicts. For instance, fear expressed by average Nigerian women that, a successful woman might be too exposed and they may not find husband; thereby misconceiving that, career women are unruly, disobedient and disrespectful.*²⁰

Biological Constraints

The physique of women is believed to restrict what they can do or achieve. Daniel Gberevbie and others observed that

when it comes to the issues of gender, there tends to be some reservations, which side tracks the female gender during recruitment process. While some of these exceptions are accommodating because of the peculiarity of female gender, which could be as a result of their psychology or emotional status, some are rejected when it aligns with skills and experiences. The concept of gender discrimination during the recruitment process also has to

¹⁸ Punch News, "UPDATED: Saudi Arabia to Allow Women to Drive in Historic Decision" (Punch Newspaper online, 26th September 2017) <<https://punchng.com/breaking-saudi-arabia-to-allow-women-to-drive/>> accessed June 2020. See also, R. Perper, 'Saudi Arabia Women No Longer Need a Man's Permission to Travel. Here Are the Biggest Changes They've Seen in the Last Two Years,' (Business Insider online, 08/02/2019) <<https://www.pulse.ng/bi/politics/Saudi-arabian-women-no-longer-need-a-mans-permission-to-travel-here-are-the-biggest/tgb5a0r>> accessed June 2020. See also B. McKernan, 'Eight Things Women Still Can't Do in Saudi Arabia' (Independent online, Wednesday 27 September, 2017) <<https://www.independent.co.uk/news/world/middle-east/saudi-arabia-womens-rights-driving-ban-lifted-marriage-custody-bank-accounts-travel-medical-a7969551.html>> accessed June 2020.

¹⁹ HRW, 'Saudi Arabia: 10 Reasons Why Women Flee,' (Human Rights Watch, 30 January 2019)

<<https://www.hrw.org/news/2019/01/30/saudi-arabia-10-reasons-why-women-flee>> accessed June 2020.

²⁰ Fatimah Bashen was appointed as the first female diplomat to the United States, Papers reported that "King Salman recently ordered an end to the long-standing guardianship rule which denied women access to government services if they did not have a male relative consent." See Owoyemi and Olusanya, supra n16.

*do with the nature of the job such as long hours, traveling, relocation and the likes, which female most markedly might not be willing and readily available to accept such jobs.*²¹

In every organization or society, women are always at disadvantage compared to men in terms of earning power and opportunities even with little differences in educational background. Gender discrimination is at the global level, as reflected in cases reported in the news involving high profile personalities like Serena Williams who, recently said that she had been a victim.²² It goes to show the fact that though women have attained occupational and educational progress in all areas of life, discrimination in pay gap continues to widen.²³

Hersch believed that “Labour markets discrimination is characterized by unequal treatment of equally productive persons in ways that are related to observable characteristics such as sex, race or ethnicity”²⁴. Whilst it is true that many women are now employed, women are still under represented in blue collar jobs; jobs where women are paid better. Sex discrimination can be invert, in situation where employers show preference for male candidates during the recruitment procedure rooted in the belief that men are not likely to be cumbered with family pressures such as child care and school runs. The fact that such discrimination cannot be detected easily as overt discrimination does not mean that it does not exist, the result being that women are pushed back to the lower rung of the employment ladder, explained by Joni Hersch thus:

*Women still comprise the vast majority of those employed as nurses, pre-college teachers, social workers and office and administrative support workers. Most engineer and construction workers are male. Substantial evidence shows an inverse relation between the proportion of females in an occupation and wages for both men and women...the importance of sex segregation in contributing to the gender pay gap cannot be over stated...Most of the pay gap is explained by sex segregations within occupations industries and establishment rather than by wage differences*²⁵.

Discrimination in the Workplace

²¹ D E Gberevbie et al, “An Empirical Study of Gender Discrimination and Employee Performance Among Academic Staff of Government Universities in Lagos State” [2014] World Academy of Science ETIJSHSE Vol 8 (No1).

²² Alicia Adejobi, ‘Serena Williams Recalls Racial Discrimination in Heartfelt Essay for Black Women’s Equal Pay Day’ (July 31, 2017) <<https://www.ibtimes.co.uk/serena-williams-recalls-racial-discrimination-heartfelt-essay-black-womens-equal-pay-day-1632824>> accessed June 2020.

²³ Owoyemi and Olusanya, supra n.16; See also N. Valticos, ‘International Labour Law,’ Dordrecht, Springer-Science Business Media, B.V.1979,131.

²⁴ Joni Hersch, ‘Sex Discrimination in the Labour Market’ (2006) VULS, Nashville TN37203 USA.

²⁵ *Ibid.*

Gender discrimination occurs at different stages of employment and can manifest in pre-employment stage, employment stage, termination of employment stage and also includes sexual harassment at the workplace.

Pre-Employment Stage

In 2014, the following was published²⁶:

*There are cases of gender discrimination during both the application process and in the work place. Job announcements often include statements that only male (or female) applicants are eligible to apply. Announcement can also define age, as well as physical appearance of women (for example: good or pleasant looking), as specific job criteria. Our experiences show that the Georgian society does not consider such announcements to be discriminatory, despite the fact that they prohibit women from equal participation in job seeking. In addition, the labour code does not specify any appropriate forms for the protection of employees from discrimination, particularly during the selection process and employment.*²⁷

Gender discrimination begins at the recruitment stage seen in requirements placed by employers to exclude women from applying; some job requirements can include words such as “stable, pleasant looking unmarried women to apply”, excluding the married women from such jobs. In some countries (especially in the Arab nations), a woman would need the written consent of her husband or father before she can be employed and in situations where the husband or father refuses to give his consent; such women remain unemployed and reliant on their husbands.²⁸

Questions put to women during the interview stage can also hamper their chances of employment; questions might actually be targeted at disarming the women and thus lowering their chances of employment. As aptly put:

*Discrimination facts occur during the job interview as well as when questions which have to identify a candidate’s professional skills go beyond limits and interfere with a person’s private life. Questions about a woman’s marital status, her plans about having kids or pregnancy put them in unequal conditions compared to men and can serve as a basis for discrimination.*²⁹

This is very common in some sectors of the economy, where answers to such questions are likely pitched against the woman in question. Some women have even

²⁶ Owoyemi and Olusanya, supra n.16.

²⁷ *Ibid*, 21.

²⁸ R. Perper, supra n18.

²⁹ *Ibid*, 21.

been asked to sign an undertaking not to get pregnant within certain number of years of employment before they can be offered the job. A woman unwilling to sign such undertaking automatically loses the job opportunity. This is a common phenomenon in the banking and telecommunications sectors.

Job Announcement

A job announcement must be couched in a language that is gender neutral and not discriminatory in any form. Definitely, it must not contain discriminatory terminologies nor should it directly or indirectly put candidates in inappropriate conditions against other candidates and/or be directed towards the employment of a specific gender or artificial decrease or selection of candidates.³⁰ It is very important that such adverts whether in the electronic media, television or in print should not contain discriminatory terms whether directly or indirectly, and such should not be tailor-made to meet certain candidate or gender. Examples include the use of words like male, masculine, or man. These are barriers that may be difficult for woman to surmount in the bid to get engaged.³¹

Interview Process

This stage is very critical for the woman having scaled the recruitment hurdles to get here, she must still face this decision stage that determines whether she gets the job or not. Questions raised at this stage can be very crucial to engagement. Questions that are not relevant to labour relations and are not to disqualify or qualify candidates should not be used. Questions that border on marital status, private life, plans on having children or pregnancy might be unnecessary. These questions are personal and, in the bid to answer them truthfully, a candidate might be disadvantaged.³²

A woman should not be disadvantaged just because she chose to have children or marry. Question asked at the interview stage should comply with the ILO Convention rules and there must not be coercion to extract information from a candidate or penalty for withholding information that is not necessary for the job. However, there are now alternative means of obtaining information about a candidate with the aid of technology. Employers can get information about a candidate on social media that may prove prejudicial to the candidate. It had been

³⁰ *Ibid.*

³¹ *Ibid.*

³² C. Miani and S Hoorens, 'Parents at Work: Men and Women Participating in the Labour Force'

Short Statistical Report No2,

<http://ec.europa.eu/justice/gender_equality/files/documents/140502_gender_equality_workforce_ssr2_en/pdf>

accessed June 2020.

canvassed that using such information to the detriment of an interviewee is illegal, and also that:

Using Facebook instead of direct personal questions during the job interview has a latent character, giving the employer the opportunity to use personal information in denying this person a job, for example, information about a candidate's marital status, pregnancy or children..., in this aspect, it is important, that social media users are aware that their information is made public and accessible to third parties... experts call for the citizens to not make the public any information about their private lives that can be used wrongfully by the third parties.³³

Special Job Requirements

There are jobs with special or specific requirements due to their nature. Those specific requirements may not constitute discrimination, might only amount to gender discrimination where certain features are not required for specific jobs and such are used to disqualify a person. It was pointed out that:

But beliefs or assumptions based on stereotypes may not be used in looking for a candidate with the mentioned requirements. For example, the job announcement should not be formulated in a way, based on a man's special skills to carry out specific work 'better than women' based on which the job advertisement only addresses male candidates.³⁴

Therefore, adverts tailored to meet specific job requirements because of the nature of the job would not be discriminatory as long as the advert is genuine, legitimate and requirements are proportionate.

Employment Stage-Workplace

Gender discrimination in the workplace takes different forms; it could be based on sex, marital status, children or pregnancy. It occurs at different stages; such as tasks assignments, paying of salaries, benefits and bonuses criteria and at the promotional stage.

Positional Segregation based on Gender

Based on the traditional beliefs in the society, some jobs are likely to be linked to women and some for men. These differences have their roots in educational

³³ E. H. Lory "Employer's Use of Facebook as a Tool in Pre-Employment Screening of Applicants: Benefits and Ethical, Legal and Privacy Implications" (2011) 107-109.

³⁴ USAID 24; ILO Better Work, Legal Brief Underlying Better Works, Compilation Assessment Tool: Discrimination (Aug 2012) 4 <http://beterworks.com/global/wp-content/uploads/legal_brief_ondiscrimination_FINAL.pdf>

segregation that conditions students' choices in a particular subject.³⁵ Men tend to invest in jobs that will increase their productivity and responsibility while women would consider their family responsibilities. These factors are considered by employers in choosing a particular gender who are considered "stable" than the other. Women tend to occupy the lower cadre in the rung of most organizations. Motivation to work may also be a contributory factor of segregation at work, thus the motivation for a woman at lower position in the second sector will not be equal to the motivation of a man who has more responsibilities and training in his higher position.³⁶ The cultural beliefs of any society influences the social systems, a society that considers women as inferior will relegate woman to menial works.

The Glass Ceiling

The "Glass Ceiling" is defined as a transparent barrier hindering women's promotion at higher corporate levels...it relates to women as an easily identified group of people just because they are women.³⁷ This is a systemic invisible barrier mostly targeted against women to prevent them from reaching certain posts or attaining necessary qualifications. The traditional belief of the male dominance in the society filters into the organization, and women are overlooked for top posts in the organization because of the belief that a woman cannot lead organizations. A woman might just discover that she is not promoted not because she is not qualified, but because of the invisible barrier that is difficult to surmount. Baxter believed that "these barriers also exist for women who have already been promoted or who are struggling their way to high hierarchy positions."³⁸ While "glass ceiling" may not be common at the lower positions, they are very intense at the higher posts. The glass ceiling is the "unseen, yet unreachable barrier that keeps minorities and women from rising to the upper rung of the corporate ladder, regardless of their qualifications or achievements."³⁹

Glass ceiling is a type of discrimination that is not based on qualifications or achievements, and mostly common at the higher cadre of employment. It is an invisible barrier not easily detected, almost non-existent yet it's so real. The term "glass" is used because it is a transparent process that many women aspiring to reach the peak of their job had to contend with. According to Wright, Baxter and Burkeland, "the glass ceiling hypothesis is not simply a claim about the existence of

³⁵ D. Meulders et al, 'Topic Horizontal and Vertical Segregation' (2010) ULB 60
<http://genderedinnovations.stanford.edu/images/TRI_segregation.pdf> accessed June 2020.

³⁶ Supra n 31.

³⁷ Morrison et al (1981) as cited by J Baxter and O Wright in "The Glass Ceiling Hypothesis" Gender Society (2000) Vol 14 No 2, 276.

³⁸ J Baxter and E.O Wright, "The Glass Ceiling Hypothesis" (Gender & Society, April 2000) Vol 14 No 2, 275
<<http://www.ssc.wisc.edu/wright/GenderGap.pdf>> accessed June 2020.

³⁹ The Federal Glass Ceiling Commission (1995b:4) Solid Investment: Making Full Use of the Nation's Human Capital, US Department of Labour.

discrimination within hierarchies; it claims that such discrimination increase as one moves up the hierarchy.⁴⁰

A lawyer stated her experiences as follows:

*At first, I didn't notice any problem, but as I got more seniors, I constantly feel that I am not treated seriously by male peers. I am paid less in the Partnership, my concerns are dismissed as emotional.*⁴¹

The term glass ceiling is quite different from ordinary inequality in the workplace as it is targeted towards professionals than non-professionals, if the same obtains at the lower hierarchy it may not be termed glass ceiling.⁴²

Cotter and others explained that “A ceiling implies that some upward movement has been made in the past but that later in one’s career, more severe discrimination sets in to block further progress.” They concluded that glass ceiling inequality represents a gender or racial inequality that increases over the course of a career.⁴³

Equal Remuneration.

Gender discrimination can manifest in an unexplained unequal remuneration for men and women even when they do the same work. Angeovska discovered that in most region and workplaces women are paid less than men for fulfillment of similar work. Women’s remuneration constitutes an average 70-90% of men’s remuneration.⁴⁴ This is a common phenomenon in most workplaces even though international treaties such as the ILO Convention No. 100 and the accompany recommendation No. 90 addressed gender imbalance in remuneration. The Conventions also proposed the media through which these can be achieved as follows:

1. National laws or regulations;
2. Legally established or recognized system for wage determination;
3. Collective agreements between employers and workers; or
4. Combination of these various means.

It further gave instruments for accessing equal remuneration thus:

⁴⁰ Wright et al, “The Gender Gap in Workplace Authority: A Cross-National Study” (1995), ASR 60, 407-35 cited in D. A. Cotter et al, “*The Glass Ceiling Effect*” (2001) <<http://www.researchgate.net/publication/236778636>> accessed July 2020.

⁴¹ Kay, M. Fiona and J. Hagan, “The Persistent Glass Ceiling: Gendered Inequalities in the Earnings of Lawyers” (1995) *The British Journal of Sociology* 46: 279-310.

⁴² *Supra* n 36 at 658.

⁴³ *Ibid*, 661.

⁴⁴ J Angeovska, “Invisible Barriers That Women Cannot Break-Glass Ceiling” International Balkan University, Macedonia 3.

- a. Whether the work is equal
- b. Whether the paid remuneration is equal.

It is important that the above instruments must be present at the same time.⁴⁵The European Union also made provision for equal payment; “for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects are conditions of remuneration.”⁴⁶ Countries that have ratified and domesticated these international treaties such as the European Union member countries have greater protection for their employees. The USAID in its report cited Finland’s protective law against gender discrimination. According to the report, in Finland, discrimination occurs “while selecting a person for specific training or occupation and determination of payment rate the person is put in unfavourable conditions compared to others because of pregnancy, child birth or other reasons grounded on the employee’s gender.”⁴⁷ It went on to say that, when “during determination of the salary, a person or persons are in unfavourable conditions compare to other person or persons when fulfilling the similar work of similar value.”⁴⁸

However, despite instruments put in place, discrimination on remuneration is still rife in most countries, the recent pay row in the United Kingdom reported in the newspapers allude to this fact. On the 8th of January 2018, the British Broadcasting Corporation News announced that their China Editor, Carrie Gracie had resigned from her post citing pay inequality with male colleagues as the reasons for her quitting; she accused the Corporation of having a “secretive and illegal pay culture.” According to her, “the BBC was facing a crisis of locust after it was revealed two thirds of its staff earning more than \$150,000 were male ..., to discover that BBC’s two male international editors earned ‘at least 50% more’ than its two female counterparts.”⁴⁹ Serena Williams added that

Unfair pay has prevailed for far too long with no consequence. Through decades of systematic oppression, black women have been conditioned to think they are less than. In many cases, these women are the heads of households, single mothers. The issue isn’t just that black women hold

⁴⁵ Supra n 31 at 51.

⁴⁶ The European Union, Directive 75 /117/EEC of February 10, 1975, cited in USAID Report; supra n 31.

⁴⁷ Act on Equality Between Women and Men (609/1986, amendments up to 232/2005 included) Art 8(1)2, <<http://www.tasa.arvo.fi/en/publications/act>> accessed June 2020.

⁴⁸ *Ibid.*

⁴⁹ BBC China Editor Carrie Gracie Quits Post in Equal Pay Row-8 January 2018 <www.bbc.co.uk> accessed April 2018.

*lower-paying jobs. They earn less even in fields of technology, finance, entertainment, law and medicine.*⁵⁰

Equal pay rights are labour rights that individuals doing the same work should be paid equally. It relates to the full range of payments and benefits from basic pay to cover benefits. In 1951, The Equal Remuneration Convention No. 100 of the ILO states that:

*Each Member shall by means appropriate to the methods in operation for determining rates of remuneration, promote and in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.*⁵¹

Women now make up over half of any country's population and sometimes are the breadwinner of the home and are taking up jobs that used to be male dominated, but they still earn significantly less than their male counterparts all over the world. From above, there can be doubt that unequal pay is real, in addition black women in the United States and other western countries face greater level of discrimination. For instance, "black women represented by a union earn an average of \$192.10, or 32.2 per cent, per week than black women in nonunion jobs."⁵² Women should be entitled to equal employment opportunities and equal pay.

Maternity Leave/Paternity Leave

The provisions of ILO Conventions provide protection for women during maternity leave. A woman is not to lose her employment during her leave but noticeably the protection does not cover what happens after the maternity leave, a woman can still be sacked after her maternity leave. Women in the private sectors are not protected by the mechanism. The ILO Convention No. 191 and Recommendation No. 183 provide that a woman should be entitled to her salary during the maternity leave. Men are now also entitled to paternity leave in many countries, even though there is little awareness of such rights; coupled with the fact that most countries have no such provisions in their labour code. Paternity leave started in Norway and had been adopted by many other countries. Unfortunately, this wind had not fully blown to developing countries as many had refused failed or neglected to domesticate such laws.

⁵⁰ Serena Williams, "How Black Women Can Close the Pay Gap," (July 31, 2017) <<https://fortune.com/2017/07/31/serena-williams-black-women-equal-pay/>> accessed July 2020.

⁵¹ Equal Pay and Compensation Discrimination <www.eeoc.gov>.

⁵² R. Warino, "When Working Women Stand Together, We Crush the Gender Pay Gap," (California Labour Federation, July 31 2017) <<https://calaborfed.org/when-working-women-stand-together-we-crush-the-gender-pay-gap/>> accessed June 2020.

Gender imbalance is still very common in the society, due in large part to the difficulty of investigating such practices or in part to the employee's refusal to come out. It was summarized as follows:

You become an investigator when working on discrimination cases and attempting to prove them; each detail matters- what was the length of telephone conversations etc. Well recorded testimonies give us more chances to prove the discrimination. Also, government policy should encourage women to disclose more information through email, if they feel uncomfortable or see the process go wrong, which will be preliminary evidence.⁵³

Discriminatory Labour Conditions

It occurs when women are placed under harsh working conditions for no reason, other than being a woman. Some employers hold tight rein on their female employees with women having to report at work earlier than others and leave later than others. Where such conditions are in place, it is discriminative. In addition, women have been discriminated against on the ground of race (because of being) married to a black man. A woman who had worked in an organization with an unblemished record suddenly got the sack when her husband visited her workplace and he was discovered to be a black man. Men are not likely to be sacked for marrying from the minority race. Furthermore, in spite of educational attainment women are often pushed back to lower level at work due to stereotypes and cultural belief. The following comments give a clear picture of the problem:

Yesterday I looked whether we should have at least one male cleaner at the parliament; many people are looking for job. When a single father, a status not considered by the law, of five children is ready to work as a cleaner, why should we limit this opportunity? Again stereotypes; because men cannot work like women.⁵⁴

Women might face promotional barriers as a result of lack of training or access to qualification courses. In a situation where a woman applies for study leave and is denied such but a male counterpart is allowed same, also where a woman take a gap in their profession and are not trained when they go back unlike their male counterparts, such would be discriminatory. This is very crucial especially when a woman goes on maternity leave and is not retrained considering the fact that technologies are constantly changing and new technology advances are churned out daily. Lack of capacity training makes women lack capacity to compete at work.

⁵³ USAID, supra 31 at 58.

⁵⁴ *Ibid* 62.

Gender Discrimination during Termination of Employment

International treaties provide protection during termination of employments. As with the workplace, discrimination occurs during termination of employment when an employer targets women more than the men. Companies sometimes fail, and may have to fold up and/or to reduce its workforce, discrimination would only occur when women are targeted because they are considered less useful to the company. Few years back, Nigeria's telecom giant - Globacom Telecommunications Limited of Nigeria was accused of targeting women as it laid off a huge number of women in a company shake up.⁵⁵

Sexual Harassment at Work

Sexual harassment is an unwelcome sexual behaviour which could be expected to make an employee feel offended, humiliated or intimidated. It could be physical, verbal or written.⁵⁶ It is an unwelcome sexual advance, requests for sexual favours and other verbal or physical conduct of a sexual nature or based on sex that affects an individual's work performance, or creates an intimidating, hostile, or offensive work environment.⁵⁷ It is very important that sexual harassment must be non-consensual and unwanted. It comes in the following ways: commenting about a person's clothing, personal behaviour, personal (romantic) relationships or body; making sexual or sex-based jokes or innuendoes; requesting sexual favours or dates; spreading rumours about a person's personal or sexual life; threatening a person for rejecting or refusing sexual advances or overtures; impeding or blocking someone's movement; inappropriate touching of a person's body or clothing; kissing, hugging, patting, stroking; assaulting (touching someone against her will or without her consent); looking up and down or staring at a person's body; making derogatory gestures or facial expressions of a sexual nature; following a person around; and /or displaying or sharing posters, drawings, pictures, screensavers or emails of a sexual nature.

Sexual harassment had been condemned widely as a form of sex discrimination and violation of human rights. Sexual harassment is a manifestation of violence against women and a common phenomenon in both academic institutions and workplace,

⁵⁵ Massive Protests Rocks Glo Over Sack of Married Women (New Telegraph, March 19 2018) <<https://www.newtelegraphng.com/massive-protests-rocks-glo-over-sack-of-married-women/>> accessed December 2018; see also N. Valticos, *International Labour Law*, Dordrecht, Springer Science+ Business Media, 1979, 106.

⁵⁶ Victorian Equal Opportunities <www.humanrightscommission.vic.gov.au/the-workplace/sexual-harassment-at-work> accessed on 16/04/2018.

⁵⁷ M. J. Langelan, *Back Off! How to Confront and Stop Sexual Harassment and Harassers*, (New York, Fireside 1993) 23; see also J. Douville, 'Sexual Harassment: Know your Rights at Work' Equal Rights Advocates ERA <<https://www.equalrights.org/issue/economic-workplace/equality/sexual-harassment/>>

<<https://www.equalrights.org/issue/economic-workplace-equality/discrimination-at-work/>> accessed June 2020.

common developed and developing countries alike.⁵⁸ Sexual harassment is a species of gender discrimination against women as it is mostly targeted against women and has great impact on performance in the workplace by interfering with the quality of work and chances of promotion.⁵⁹ The following describes what women face in the workplace:

Also, these artificial barriers that women face during their job alleviate the chances of quitting. The occurrence of sexual harassment and the fact that it is ignored discourages women to work in a male-dominated workplace. As such sexual harassment is a form of gender discrimination that can both bring forth and result in gender inequality. This clearly points out the need for separate regulation and explicit policy on the issue.⁶⁰

Cases of sexual harassment are rampant among low income earners, people working in male dominated organizations, vulnerable migrants (in developing countries) and sometimes among men, especially young men, gay men and minorities working women.⁶¹ Sexual harassment affects women's health by increasing stress at work, leading to despair thus affecting productivity and other opportunities. In serious cases, it may lead to psychological breakdown and acute cases of depression in women. CEDAW believes that "Equality in the workplace may be seriously impaired when women are subject to gender-based violence, such as sexual harassment in the workplace."⁶² The ILO Convention No 111 states that "harassment undermines sexual equality in the workplace, putting into question the integration and prosperity of individual workers, it affects productivity and induces the weakening of the institution on the basis on which the whole labour relations are supported..."⁶³

Types and Forms of Sexual Harassment

1. Quid Pro Quo (literally, "this for that")
2. Hostile Work Environment⁶⁴

⁵⁸ USAID, supra n 49 at 73; See also Sexual Harassment Charges, EEOC (1997-2011) Statistics <<http://www.eeoc.gov/eeoc/statistics/enforcement/sexual-harassment.cfm>>; see also, R. Ekpu, 'OAU and Sex' The Guardian Nigeria Newspapers (Tuesday 26 June, 2018) 9.

⁵⁹ Ibid at 74.

⁶⁰ Ibid 74

⁶¹ A. Numhauser-Henning and S. Laulom, "Harassment Related to Sex and Sexual Harassment Law in 33 European Countries, Discrimination Versus Dignity" [2011] 16 <http://www.ec.europa.eu/justice/gender-equality/files/your_rights/final_harassment_en-pdf> accessed July 2020.

⁶² The Committee on the Elimination of All forms of Discrimination Against Women: General Recommendation No 19 on Violence Against Women (1992) para17.

⁶³ ILO: Committee of Experts: Special Survey on the Application of Convention No 111 on Discrimination in Employment and Occupation, Geneva, 1996, 16.

⁶⁴ Handbook on Sexual Harassment of Women at Workplace (2015) Government of India Ministry of Women and child Development.

Joni Hersch pointed out that some features of an organization can foster sexual harassment. An organization's tolerance for sexual harassment and gender composition of the workplace might include factors such as the sex of the supervisor and whether an occupation is considered traditionally male. Sexual harassment is likely to be more prevalent in organizations with larger power differentials in the hierarchical structure, and male dominated structures like the military.⁶⁵

Costs of Sexual Harassment

As had been discussed above, sexual harassment can have mild to serious effects on the victims and affect both their health and income thereby reducing productivity. On the other hand, it could be costly for the organizations in which such behaviour exists. Hersch observed that "the costs to organizations include turnover and absenteeism, lower individual and group productivity, loss of managerial time to investigate complaints and legal expenses, including litigation costs and paying damages to victims."⁶⁶ Employers can also be held vicariously liable for the actions of their employees where they fail to stop such harassments or fail to put mechanisms in place to forestall such actions. In 2004, a woman working as a security guard in a South African company won a significant case of sexual harassment: it was the first time an employer was held liable for sexual harassment by one of his employees. The company was ordered to pay the victim compensation for unfair dismissal and sexual harassment.⁶⁷

However, there is need for balance in determining what constitutes sexual harassment in an organization;

Care should be taken to avoid defining it so broadly as to cause work relations to break down because co-workers fear being accused of sexual harassment for behaviour intended as collegial or friendly. Creating such an atmosphere of distrust and ambiguity may also adversely affect productivity. The survey of U.S government workers reports that nearly half the men expressed concern that giving complements might be misinterpreted as sexual harassment. However, relatively few workers - 18% of men and 6% of women reported that fear of being accused of sexual harassment made their workplace an uncomfortable place to work.⁶⁸

⁶⁵ Joni Hersch, "Sexual Harassment in the Workplace"(2015) Vanderbilt University USA, IZA, Germany Workplace-12A <<http://wol.iza.org/articles/sexual-harassment-in-workplace>> accessed June 2020.

⁶⁶ Ibid

⁶⁷ *Media 24 Ltd and Anor. v Grobler* [2005] 3 All SA 207 (SCA) (1 June 2005).

⁶⁸ U.S Merit Systems on Fundamental Principles and Rights at Work, Harassment in the Federal Workplace: Trends, Progress and Continuing Challenges (1995) US Government Printing Office, Washington D.C.

Combating and Preventing Sexual Harassment

Legal and institutional/organizational frameworks are to be put in place to address sexual harassment. Employers must take steps to prevent the occurrence of sexual harassment by educating their employees on the impact of sexual harassment at work. They can achieve this by putting in place clearly stated policies meant to address sexual harassment and by making it possible for employee to make complaints in confidential manner.⁶⁹ It is important for employees to be protected, and such protection must cover their witnesses, removing the fear of retaliation from the employer or other co-worker. Managers and supervisors must be trained; the training and awareness are necessary because, if an employer fails in this regard, he may be found guilty of not taking reasonable care.

Hersch believed that training in what constitutes workplace sexual harassment and in the organization's policies toward sexual harassment increases the probability that workers, especially men, will identify unwanted sexual behaviours such as touching, as sexual harassment. Workers who have awareness of what behaviours that constitute sexual harassment may be motivated to avoid such behaviours as well as to enforce that norm in their workgroup.⁷⁰ Organizations can also put in place policies bordering on zero tolerance for sexual harassment as well as counseling supports for victims.

Legislation

Most countries have laws protecting the generality of the populace from discrimination. However, these provisions may not be enough to combat the problem of sexual harassment in the workplace. Protection from sexual harassment is one of the fundamental human rights of an individual and laws should be promulgated to protect the rights. In addition, the labour laws of each country should cover issues of sexual harassment and other gender issues. Countries can also borrow ideas from other countries on sexual harassment. In particular, the United States and many of the European nations had been at the forefront of the fight against sexual harassment. They have institutions such as Employment Opportunity Commission that had been adopted by other countries.

African countries generally lag behind, most countries in Africa do not have mechanisms in place to support women or to stop sexual harassment in the workplace. However, some progress has been made in the fight for protection of women, some countries now have laws in place that had criminalized sexual harassment. Victims are now able to sue for damages, also sexual harassment can

⁶⁹ D. Otobo, *Industrial Relations: Theory and Controversies*, Lagos, Malthouse Press (2000)171.

⁷⁰ Hersch, op cit, 6; see also, H. Antecol and O. Cobb-Clark "Does Sexual Harassment Training Change Attitude? A View from the Federal Level," (2003) *Social Science Quarterly* 84:4, 826-842, cited by Hersch.

fall under labour laws and human rights law,⁷¹ torts, criminal law, and so on. It would be difficult for a victim to have respite where adequate laws are not in place.

Furthermore, there are international instruments in place to protect women from being sexually harassed at work, some of such instruments are

- a. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Recommendation No. 19 (11th Session, 1992).
- b. Declaration on the Elimination of Violence Against Women - The 1993 General Assembly Declaration on the Elimination of Violence Against Women.
- c. The United Nations Fourth World Conference on Women.
- d. ILO Conventions.
- e.

In conclusion, Romana Asmat and Mehboob summarized as follows:

Sexual harassment at the workplace is a social challenge that needs to be addressed. It is important to enhance the awareness of employers and employees on the existence of forms of sexual harassment at the workplace, preventive measures and legal framework on preventing and addressing sexual harassment. Discrimination and awareness raising activities should be regularly conducted and evaluated in order to improve best practices on how to address sexual harassment in the workplace, and also to forewarn and inform on forms of sexual harassment to enable potential victims to avoid them. Enhancing training courses on sexual harassment and providing documentation, or a handbook on the prevention of sexual harassment at the workplace can help in combating it. The training can be organized in modular form, including knowledge, skills, education and communication on the prevention of sexual harassment at workplace, as well as counseling and proper guidance.⁷²

Legal and Institutional Frameworks for the Protection of Women at Workplace

The Nigerian Constitution provides protection against all forms of discrimination and equal rights to all men irrespective of their birth, it states that:

⁷¹ D. McCann, "Sexual Harassment at Work: National and International Responses, Conditions of Work and Employment Programme" (2005) ILO.

⁷² R. Asmat and S. Mehboob, "International Laws and Policies for Addressing Sexual Harassment in the Workplace" (March 2016) IRJIMS <<http://www-irjims.com>>.

A citizen of Nigeria of a particular community, ethnic group; place of origin, sex, religion or political opinion shall not, by reason only that he is such a person

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria or other communities, ethnic groups places of origin, sex, religions or political opinions are not made subject.⁷³

That part of the Constitution is meant to give protection to women from all forms of discrimination; however, this protection might not be sufficient when compared to other countries that have more comprehensive laws for labour relations. This at least, gives a measure of protection than none at all. It is essential that women have equal legal and human rights as the men by eliminating gender discrimination in the existing laws and legislations in Nigeria. For example, The Police Act is full of discriminatory provisions that only addressed the women and not the male police, for instance, Section 120 provides as follows:

Women Candidates for enlistment in the Force shall in every case be interviewed by the interviewing officer in the presence of a suitable female person, who shall be, in every case where this is practicable, a woman officer.⁷⁴

One cannot but wonder why it is necessary that female candidates have to be screened in the presence of another female police officer and no similar provision is made for their male counterparts. A further perusal of the Police Act leaves no doubt that there are gross gender discriminations in the Act. Section 121 listed the duties of female officers and limits them to the menial duties of investigating sexual offences, collecting statements from female witnesses/accused and children, school crossings, crowd control and so on, whilst the serious police jobs are reserved for the men. Other than discrimination, there is absolutely nothing that stops female officers from being involved in serious policing as their contemporaries in other parts of the world. The Act went further to expressly exclude women from drilling and handling arms by stating that “A female police officer shall not be called upon to drill under arms or to take part in any Baton or riot exercise.⁷⁵”

There is clearly no justifiable reason why a female officer cannot take part in drills except the traditional belief that women are physiologically weak and cannot work

⁷³ The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) Section 42(1)(a).

⁷⁴ Section 120 of the Police Act and Regulations (CAP P19 LFN 2004).

⁷⁵ Section 123 of the Police Act.

under great stress. Beliefs that over the years had been proved wrong in many developed countries which allow their female police officers to take part in drills and handle weapons.

A more ludicrous provision can be found in Sections 124 and 127 of the Police Act, Section 124 goes thus:

A woman police Officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Police command in which she is serving, requesting permission to marry and giving the name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the police for a period of not less than three years.

Section 127 states that:

An unmarried woman police officer who becomes pregnant shall be discharged from the Force and shall not be re-enlisted except with the approval of the Inspector-General.

The above laws are discriminatory, mandating female officers to get approval before they can marry, an act their male counterparts do freely connotes that women cannot make right decisions about their own lives. Questions that crop up is “who determines the character of the intended husband, and where approval is denied, what happens?” There are no direct answers to these questions. Unarguably, these provisions are inhumane, demeaning, irrational and unjustifiable, and should be expunged from the Police Act. There are other discriminatory laws against women hidden in most organizations’ policies as cited above, it is common and Nigeria is not left out. That is why it is important that the constitution of every nation must have entrenched in it, basic human rights. Employment rights are part of human rights such as rights to life, movement, peaceful assembly and associations, privacy, human dignity, liberty, property and other rights as seen in Chapter IV of the Nigerian Constitution.⁷⁶ The Constitution provides redress for a party whose rights had been violated to go to the courts to enforce same.⁷⁷ It was argued that:

thus, the provision of Section 42 under Chapter IV is enough to cover all these anti discriminatory provisions. The question of infraction of a fundamental right can be canvassed at any stage of the proceedings before

⁷⁶ B.I Benisheikh, H. B Ghide and Y.A Dunoma ‘Gender Discrimination in Employment: An Analysis of Issues of Violations of Women’s Rights’.

⁷⁷ See *Bronik Motors v Wema Bank Ltd* (1983) 3 SC 158; see also *Dilly v IGP & Ors* (CA/L/12/2013) [2016] NGCA 21.

*a court of law, even where previously not pleaded by the party seeking to raise it.*⁷⁸

Nigeria had ratified some of the provisions of CEDAW but some states are still maintaining their draconian policies on women and children, slowing down the wheel of progress in the fight against discrimination.⁷⁹

The National Industrial Court

The National Industrial Court was established by Section 254A of the CFRN, 1999⁸⁰ to deal with labour matters between employers and employees, and other related labour matters. The Court was a creation of the Constitution and has coordinate jurisdiction with the High Court, “relating to or connected with any labour employment, trade union, industrial relations and matters arising from the workplace, the conditions of service, including health, safety, welfare of labour, worker, and matters incidental thereto or connected therewith.”⁸¹ The Act also covers disputes “relating to or connected with unfair labour practices or international best practices in labour, employment and industrial relations matters;⁸² relating to or connected with any dispute arising from discrimination or sexual harassment at work.”⁸³

The court is to deal with labour relations between employees and an employer, that is, those that had already been employed, an unemployed person cannot claim under the Act. The Labour Act⁸⁴ that has laws on recruitment process under was silent on this point, thus, a woman that had lost a job due to discriminations cannot run to court since there is no provision for her under the law to come under.

In addition, the court is to address issues arising from the workplace. There are situations where issues might not have arisen from the workplace, but are still connected to the workplace, it is unclear what redress are available for people that had suffered wrongs under such circumstances. Furthermore, the Act provides that matters relating to gender discriminations and sexual harassment are to be handled by the court but failed to give details as to what constitutes gender discriminations or sexual harassment. If there are no express provisions, it could be very difficult to recognize acts as constituting harassment and it becomes very difficult to establish

⁷⁸ Benisheikh, supra n 4, 27.

⁷⁹ *Ibid*

⁸⁰ See Third Alteration Act 2010, Act No.3.

⁸¹ Section 254C-(1) (a) of the 1999 Constitution (Third Alteration) Act, 2010, ACT No.3.

⁸² Section 254C-(1) (f) of the Constitution.

⁸³ Section 254C-(1)(g) of the Constitution.

⁸⁴ Sections 23-32 of the Labour Act.

in court. The vagueness of the law in that area would only expose the victims to unnecessary burden of proof in an already difficult and embarrassing situation.

It is not clear whether an employer can be held vicariously liable in Nigeria for failing to exercise his duty of care to his employees in the case of discrimination/harassment where the victim had suffered emotional stress and other health related problems as a result of harassment at work. It is essential where it can be shown that the employer had been aware of such but had failed, refused or neglected to address the problem. The use of the word “health” is all-encompassing and covers mental health, safety, and protection from exposure to sexual harassment at work. In addition, the court has jurisdiction on disputes arising from payment or nonpayment of salaries, wages, pension and other entitlements,⁸⁵ but it does not address the imbalance in payment of remunerations. Moreover, the court is empowered to adopt international best practices that had been ratified by law in Nigeria, but the Constitution states that “no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the national Assembly”⁸⁶ There appears to be a contradiction here between the two provisions as there are marked differences between ratification of law and enactment of the same. It is not clear what the position of law is in this area whether the industrial court can adapt international best practices without such being enacted into laws in Nigeria.

Laws and decisions that promote gender discrimination against women go contrary to the provisions of the Nigerian Constitution on equality and other various international treaties⁸⁷ and such should be removed. In conclusion, Nigerian legal system gives women little protection in the workplace and there is need for a massive overhauling of the law.

Conclusion

The protection and promotion of equality between men and women have been recognized all over the world as fundamental human rights, with the backing of international instruments including the Universal Declaration of Human Rights (1948), to which many countries have ratified. Despite the ratification of these international treaties, women still continue to face discrimination at the workplace. Countries must adopt specific legislations prohibiting discrimination and promoting equality in employment. The emphasis should be on governments positively taking

⁸⁵ Section 254C (1) (k) of the 1999 Constitution.

⁸⁶ Section 12 of the 1999 Constitution.

⁸⁷ Nigeria Law Legalized Gender Discrimination (Leadership Newspapers online) <<https://blog.ngcareers.com>> accessed June 12 2018.

adequate measures to prevent discrimination and promote equality, consistently applied through legal, administrative and other provisional measures. The Labour Act must be amended to succinctly reflect ILO Conventions and other recommendations given on gender equality and equal opportunities at work.

Recommendations

Each society must seek to empower women and protect them against gender discrimination.⁸⁸ It is essential to the wellbeing of every society. The starting point would be the Constitution being the grundnorm of the society, a society cannot grow beyond its laws, being the reflection of the ideals held by it. When the laws are discriminative in nature, it is only natural that such a society would be discriminative and inevitably influencing the workplace. The Nigerian Constitution in itself has many provisions that are discriminatory against women, it is necessary to amend the Constitution to take care of this obvious shortcomings. The following recommendations have been made:

National laws and regulations must reflect gender equality. The National Assembly must make laws that give women equal right in the workplace. Girls should have access to quality education, as education is the pathway to being financially independent in life, government at every level must step in to put necessary mechanisms in place for rectification, where girls lack access to education, especially in the rural areas.

Labour laws and policies must be couched in such manners as to reflect current international best practices. Current gender issues such as unequal remuneration, racial profiling, sexual harassment among others are to be given comprehensive coverage in the labour laws, failing which, women would continue to find it difficult to enforce their rights in the courts if there are no laws that offer them protection.

In addition, there should be a legally established and recognized forum for wage determination. The wages should reflect the work done and men and women should be paid equally for similar works. This can be achieved by collective agreements between employers and employees; and effective policies should be used to speed up wage equality. Women should be given incentives to work by investing on women's education and capacity building, while creating enabling environment to aid their climb on the corporate job ladder. It should be made illegal for

⁸⁸ L. Iberiyenari, "Gender Discrimination in the Workplace: Are Women Sufficiently Protected?" (The Lawyers Chronicles) <www.thelawyerschronicles.com>accessed July 2020.

organizations to deny a woman promotion, or to bypass her for preference for male candidates even where she was more qualified and entitled to the position.

Governments and organizations should champion the course of educating the populace about the danger in gender stereotyping which does threaten female career advancement. The issues of sexual harassment should be addressed proactively in the workplace, employers may need to do more to educate and train their employees on the effects of sexual harassment whilst putting in place standard policies modelled on international best practices in workplaces. There must be the recognition that workplace sexual harassment is a form of human rights violation.

Employment agencies both public and private should promote equal employment opportunities by encouraging applications from all eligible workers, men and women and reviewing the recruitment record for both sexes; rejecting discriminatory requests from prospective employers and informing them of the law and national policies on equal opportunities; informing applicants of their right to equal employment opportunities and informing applicants of any policies and practices concerning work-family reconciliation measures

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