

The need for a national legislation for the protection of women from workplace discrimination in Nigeria: Lessons from the existing UK legal framework

International Journal of
Discrimination and the Law
2025, Vol. 0(0) 1–27
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DOI: 10.1177/13582291251322180

journals.sagepub.com/home/ijdl



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Abstract

Sex discrimination is a barrier to female progression in the workplace. Nigeria, a member nation of the United Nations is committed to the elimination of all forms of discrimination against women and have adopted the Sustainable Development Goals to achieve gender equality. This study will examine the legal framework on sex discrimination in Nigeria to determine the suitability of the available laws in protecting women when they have become victims of sex discrimination at work. In doing this, the study will analyse the current situation of women in Nigeria and some of the practices that discriminate against them and will highlight the need for a robust law to protect them and promote equality. The study will also examine the legal framework of the United Kingdom sex discrimination laws as a benchmark and with a view for learning lessons from the United Kingdom. The study found that the existing sex discrimination laws in Nigeria are inadequate to protect women and girls, highlighting the need for robust national legislation to safeguard them when they become victims of workplace discrimination. The study proposes enacting comprehensive legislation for effective implementation and enforcement, along with adopting non-policy measures to eliminate discrimination and promote workplace equality.

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Keywords

sex discrimination in the workplace, gender inequality, Nigeria, United Kingdom, laws, promote equality, equality act 2010

Introduction*Background*

In many societies, women are subjected to inequality and excluded from equality-based treatment on the belief that they belong to an inferior gender. This view was supported by the claim that basic rights to liberty and equality were intrinsic in individuals by virtue of their rationality which women were believed to lack and as a result women were denied equal rights (Fredman, 2002).¹ Women in traditional African societies are not immune to this treatment. They are subjected to unequal treatment on the basis of their sex and are denied access or unequal access to economic opportunities, status, power and privileges in society (Kangiwa, 2015).²

It is suggested in literature that the subordination of women in traditional African societies came about as a result of colonisation which also brought with it male centred Christian and Islamic religions. Due to the male centred nature of the colonialist institutions, African women were stripped of their powers in societies and were excluded from authority, and the Victorian concept of womanhood was introduced within African societies (Uchem, 2001).³ Discriminatory practices were introduced such as the system of education which catered differently for boys and girls by establishing elite institutions that prepared boys for professional careers such as doctors, lawyers and engineers while institutions set up for girls taught them how to cook, bake and knit (Okoh, 2002).⁴ Uchem was of the opinion that this was what brought about 'inferiorization and marginalisation' of Nigerian women leaving excesses of male domination unchecked which was used to oppress women. On another hand, some writers were of the view that subordination of women existed within the African society prior to the advent of the Europeans (Okoh, 2002). There were many African practices which were inherently discriminatory such as the widowhood rites which were inhumane to women and practices relating to inheritance which denied widows and girls inheritance rights to their husband's and father's properties (Okoh, 2002).

¹ Fredman S. (2002) *Discrimination law* Oxford University Press, New York.

² Kangiwa A.G. (2015). Gender Discrimination and Feminism in Nigeria *International Journal of Economics, Commerce and Management* Vol. III, issue 7, pg 752-768.

³ Uchem R. (2001). *Overcoming Women's Subordination in the Igbo African Culture and in the Catholic Church: Envisioning an Inclusive Theology with Reference to Women*. Dissertation.com.

⁴ Okoh J. (2002) *Feminism: An African Perspective in Women in Nigerian History: The Rivers and Bayelsa States Experience* edited by Nkparom Ejituwu and Amakievi Gabriel Onyoma Research Publications.

The Nigerian government is committed to eliminate discrimination and promote equality and has through international instruments, regional instruments, and enactment of national legislation tried to legislate to protect women from discrimination and promote equality between men and women. Despite years of the existence of these provisions, women continue to be victims of sex discrimination and harmful practices both in public and private life. In Nigeria, women are particularly in need of protection due to all the numerous harmful cultural practices directed at them that continue to subjugate them (Okongwu, 2021).⁵ The discriminatory issues and harmful cultural practices women in Nigeria face are now well documented (see Ifemeje and Umejiaku, 2014;⁶ Fayokun, 2015;⁷ Okongwu, 2021; Adeosun and Owolabi, 2021⁸) therefore this paper will briefly highlight a few of these practices with a particular focus in the world of work.

The aim of this paper is to examine the legal framework on sex discrimination in Nigeria and consider the suitability of the provisions in protecting women when they have become victims of discrimination at work. The study will also examine the legal framework of the United Kingdom sex discrimination laws as a benchmark with a view to proposing legal recommendations for Nigeria. The central aim of the paper is to highlight the inadequacies of the current legal provision in protecting women from sex discrimination and highlight the need for a robust national legislation to protect women from sex discrimination.

Overview of the Nigerian situation

Gender inequality: Focus on Nigeria

Gender inequality is a highly pervasive problem in Nigeria and has been exacerbated by the patriarchal nature of the society and various cultural and religious practices found amongst the various ethnic groups in the country. As a patriarchal society, Nigeria stratifies and differentiates on the basis of gender which is used as a premise for men to dominate in all sections of society (Makama, 2013).⁹ As a result of societal stratification, material advantages are made available to men such as ownership of land while women are denied such advantages and restricted to the home with the general belief that their rightful place is in the kitchen (Makama, 2013). As a consequence of subordination of women in society, leadership roles have been assigned to men with the responsibility of

⁵. Okongwu O.C. (2021) Are laws the appropriate solution: the need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria. *International Journal of Discrimination and the Law* vol. 21(1) 26 - 46.

⁶. Ifemeje and Umejiaku (2014) Discriminatory cultural practices and women's rights among the Igbos of south-east Nigeria: a critique. *Journal of Law, Policy and Globalization* 25: 18.

⁷. Fayokun (2015) Legality of child marriage in Nigeria and inhibitions against realisation of education rights. *US-China Law Review* 12: 812.

⁸. Adeosun, O. T., & Owolabi, K. E. (2021). Gender inequality: determinants and outcomes in Nigeria. *Journal of Business and Socio-economic Development*, 1(2), 165-181.

⁹. Makama G.A. (2013) Patriarchy and Gender Inequality in Nigeria: The Way Forward. *European Scientific Journal* vol.9 no.17 at 115-144.

making decisions irrespective of whether the decision has an adverse effect on women. Boys and girls are socially conditioned to expect men to lead in the home and girls to cook and serve them (Uchem, 2021).

Women are culturally denied any advancement in social status except for that acquired through their fathers or husbands and any achievement made by a woman is ascribed to her husband due to the bride price payment that views women as the properties of their husbands (Kangiwa, 2015). Cultural factors such as denial of inheritance rights to women and girls; male gender preference; and early marriage for girls are only a few of the examples of practices that impact on the unequal treatment of women in Nigeria. The hierarchical system that exists in patriarchal societies like Nigeria enables men dominate women by exercising control over women's labour and maintaining control by excluding them from access to economically productive resources. The long-term effect of these practices is that girls are denied education and ownership of land which in turn hinders their future economic opportunities and freedom (Makama, 2013). Women and girls therefore face gender discrimination because they are born female, resulting in exclusion or restrictions from enjoying rights, opportunities, and access to resources (see OHCHR 2018).¹⁰

Cultural experiences of a society are constructed and reproduced in organisations and as a result cultural practices affect women in organisations through the context based cultural rules and norms (Gherardi and Poggio, 2001).¹¹ Historical division of labour along the lines of gender generated norms about the appropriate roles of women has persisted across generations affecting women's participation in activities outside the homes (Alesina, Giuliano and Nunn, 2013)¹² Women were restricted to the homes and those who ventured out to seek employment were excluded because men felt that their positions would be undermined (see Cockburn, 2009).¹³ The view that organisations are a male domain may be the reason why women in certain communities continue to be restricted from carrying out certain functions or attaining certain positions in organisations.

Sex discrimination at work: Focus on Nigeria

Inequality remains a problem for women and is enshrined in the laws of many countries (Fredman, 2013).¹⁴ Sex discrimination at work occurs when employment practices or

¹⁰. OHCHR 2018. United Nations High Commissioner for Human Rights (OHCHR), Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice' (2018), United Nations High Commissioner for Human Rights New York and Geneva, 2018, 1-59.

¹¹. Gherardi S. and B. Poggio (2001) Creating and recreating gender order in organizations. *Journal of World Business* 36(3): 245-259.

¹². Alesina A, Giuliano P. and N. Nunn (2013) On the Origins of Gender Roles: Women and the Plough. *The Quarterly Journal of Economics* Vol. 128 No. 2.

¹³. Cockburn C. (2009) On the machinery of dominance: women, men, and technical know-how. *WSQ: Women's Studies Quarterly* 37(1-2): 269-273.

¹⁴. Fredman S. (2013) Anti-discrimination laws and work in the developing world: a thematic overview. Background paper for the World Development Report.

policies disproportionately impact individuals based on their sex. Globally, fewer women are found to participate in the labour force and more of those who do are concentrated in low level and low paying jobs and as a result are placed at an economic disadvantage when compared to men (Klugman and Twigg, 2016).¹⁵ On the average, women earn less than men for the same work and gender gaps in earnings persist as a result of differences in levels of education and economic activities (Klugman and Twigg, 2016). Discrimination can impact on productivity in the workforce by excluding potentially productive workers and failing to capitalize on their full potential (Fredman, 2013).

In many developing countries such as Nigeria, women are excluded from the most fundamental protection against violence by husbands, employers or state. Without such basic rights, labour market participation is severely compromised which has an impact on their living standards and they are subjected to victimization, violence and harassment as well as inhibiting their opportunities for promotion (Fredman, 2013). Barriers to female participation in economic activities are found to be entrenched in traditional beliefs and customs which discourage female participation in decision making (Adeyemi, Odusina and Akintoye, 2016).¹⁶ These factors are used as a means to deny women access to education and wealth creating assets which in turn prevent them from acquiring the necessary skills and information required to effectively participate in the labour market (Adeyemi, Odusina and Akintoye, 2016). Lack of female participation in the labour market creates female poverty commonly seen in all sectors of the Nigerian economy. Adeyemi, Odusina and Akintoye found that religion has an impact on female labour force participation in Nigeria because women are unable to assert their rights against their husbands and communities and they cannot empower themselves economically due to the high cost of caring and lack of social services. Women are also unable to negotiate power within the home if they are not wage earners because with their earnings, they are unable to protect themselves within the home when they are under threat.

Culture also plays a role in female labour participation where certain skills and attributes are associated with different genders. Skills such as technical skills, corporate management and finances have been attributed to masculine characteristics; while occupations such as nursing and clerical work have been assigned to female characteristics (Britton, 2000).¹⁷ Culture has also played a key role in female labour force participation in Nigeria where women are expected to perform stereotypical roles which exclude leadership and decision-making roles (Okeke, 2017).¹⁸ Men are socialized for leadership positions and women are socialized for supportive and caring roles and in Nigeria, men are found mostly in managerial or executive positions in organisation while women are

¹⁵. Klugman J. and S. Twigg (2016) *Gender at Work in Africa: Legal Constraints and Opportunities for Reform* African Journal of International and Comparative Law.

¹⁶. Oluwagbemiga E. Adeyemi., Kolawole E. Odusina and Akinwale E. Akintoye (2016) *Religion and Labour Force Participation in Nigeria: Is there any Inequality among Women?* African Journal of Reproductive Health vol. 20, No.3 pp. 75-84.

¹⁷. Britton, D.M. (2000). *The Epistemology of the Gendered Organisation*. *Gender and Society* 14(3):418.

¹⁸. Okeke, Okeoma John-Paul (2017). *Nigerian Culture: A Barrier to the Career Progress of Women in Nigeria*. *Global Journal of Human Resource Management* vol. 5, no. 55, pp. 1-11.

found predominantly in subordinate and low-level jobs (Adebayo and Udegbe, 2004).¹⁹ Few women therefore attain managerial and decision-making roles which are reserved for men and in which men are trained and supported and advanced in such roles thereby causing gender imbalance in management roles (Okeke, 2017).

Women continue to face discrimination in different areas of their lives and are unable to challenge these because the laws are not sufficient to protect them from discrimination. In order to make recommendations for a review of the laws, the current legal position in the area will be analysed to understand its inadequacies in protecting women.

Legal position in Nigeria

Nigeria has a federal system of government where power is divided between the federal government, the state government and the local government. The powers of the government are shared among these three tiers of government in such a way that each tier exists separately and independently from other tiers with its own will, authority and machinery to conduct its affairs to the exclusion of all others and free from any interference or direction from another government (Nwabueze, 1983).²⁰ The powers of the government are embodied in the Constitution of the Federal Republic of Nigeria 1999 as amended (the Constitution) which is supreme over the general and state governments and overrides any act done or laws laid down by these governments if such acts or laws are contrary to the provisions of the Constitution (Nwabueze, 1983). Each of the three tiers of government derives its powers from the Constitution and has its sphere of authority upon which it can legislate. Federal laws are automatically applicable in the Federal Capital Territory but need to be domesticated to operate within the state governments while state laws and domesticated Federal Laws are automatically applicable within the local governments (OHCHR 2022).²¹

As well as the three-tier system of government, Nigeria also operates a tripartite legal system which consists of Common Law which was introduced during the colonial era and co-exists with the indigenous legal systems of Customary Law applicable in Southern Nigeria and Islamic Sharia Law applicable in Northern Nigeria (Zahn 2009).²² The tripartite legal system and three tier system of government makes it difficult to achieve gender equality in Nigeria (Okongwu, 2021). This is as a consequence of the inconsistencies created by the application of the three legal systems with the discriminatory provisions of the Customary and Sharia laws. The government has made an attempt to put some measures in place to eliminate sex discrimination against women such as the provisions of the Constitution and the creation of the National Gender Policy through the

¹⁹. Adebayo D.O. and I.B. Udegbe (2004). Gender in the Boss-Subordinate Relationship: A Nigerian Study. *Journal of Organisational Behaviour* 25, 515-525.

²⁰. Nwabueze B.O. (1983). *Federalism in Nigeria under the Presidential Constitution* Sweet and Maxwell.

²¹. OHCHR 2022 <https://www.ohchr.org/sites/default/files/documents/issues/localgvt/cfi/local-government-and-hr/submissions/2022-09-15/submission-local-government-and-human-rights-nhri-nigeria.docx> (accessed 21/06/2024).

²². Zahn R. (2009). Human Rights in the plural legal system of Nigeria. *Edinburgh Student Law Review* 1(1), 66-89.

Federal Ministry of Women and Gender Affairs, ratifying some international and regional conventions like the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which prohibits all forms of discrimination against women and the African Charter on Human Rights and Peoples' Rights (the Charter) and its Optional Protocol.

National legal framework

The Constitution. The Constitution, the grundnorm, aims to address the discriminatory provisions of any statutory enactment, customary laws and sharia laws by invalidating them if they are found to be incompatible with the provisions of the Constitution.^{23, 24} The Constitution through the provisions of sections 15, 17 and 42 provides the national framework on discrimination. Section 15(2) encourages national integration and prohibits discrimination on any of the listed grounds including sex. Section 17(3)(a) and (e) promotes equality of rights and opportunities and also ensures that adequate opportunities are provided for securing employment without any form of discrimination and that equal pay for equal work is paid without discrimination on the grounds of sex or on any other grounds. Section 42 provides that a Nigerian citizen with any of the listed characteristics including sex should not “be subjected to either expressly, 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” or accorded “any privilege or advantage” to which others are not made subject to or accorded to. These provisions apply equally to a man and a woman.

The courts rely on section 42 of the Constitution along with the African Charter (discussed below) to nullify discriminatory laws and practices against women. This was seen in the recent cases of *Incorporated Trustees, Nigeria Bar Association v AGF & 2 others*²⁵ where the Court of Appeal struck down Regulations 126 and 127 of the Police Force Regulations that empowers the Police Force to terminate the services of an unmarried Police woman who gets pregnant while in service; and in *Omolola Olajide v The Nigerian Police Force & 2 others*²⁶ where the National Industrial Court declared the dismissal of an unmarried pregnant policewoman as unlawful. The Court in reaching its decision in *Olajide's case*, compared the treatment of female and male police officers and declared that Regulation 127 and Section 127 of the Police Act were discriminatory, illegal and unconstitutional. The provisions, which penalized female police officers for getting pregnant before marriage but did not apply similar restrictions to male officers who impregnate women, were found to violate the claimant's fundamental rights under Section 42 of the Constitution and Article 2 of the African Charter and was declared null and void.

^{23.} The Constitution of the Federal Republic of Nigeria 1999 as amended.

^{24.} Section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

^{25.} CA/ABJ/CV/454/2022 <https://thenigerialawyer.com/court-of-appeal-strikes-down-discriminatory-police-regulations-on-dismissal-of-pregnant-unmarried-officers/> accessed on 22/06/2024.

^{26.} [2021] suit No NICN/AK/14/2021 (unreported).

The Federal High Court had in *Dr (Mrs) Priye Iyalla-Amadi v the Nigerian Immigration Service (NIS)*²⁷ declared as unconstitutional and contrary to section 42(1) of the Constitution and Article 18(3) of the African Charter the immigration service's policy which requires a married woman to obtain her husband's permission before an international passport would be issued to her. Other cases where the Supreme Court or the Court of Appeal relied on the Constitution and/or the African Charter to declare as unconstitutional the discriminatory treatment of women are *Uke & anor v Iro* (2001)²⁸; *Mojekwu v Iwuchukwu* (2004)²⁹; *Okonkwo Timothy (Alias Job) v Sunday of Orka & anor* (2007)³⁰; *Ukeje & anor v Ukeje* (2014)³¹; *Okeke v Okeke* (2017)³²; and *J. Ordu & ors v Elewa & ors* (2018)³³ (Ovrawah 2020).³⁴

Despite the success of section 42, the section has been found to be limited in scope (Okongwu, 2017).³⁵ The section provides protection against discriminatory executive or administrative actions of the government but not against individuals, private organisations or workplace policies and practices. This was the approach adopted by the trial court in the case of *Madu v Onuaguluchi*³⁶ where it held that fundamental rights are not enforceable against private individuals but only against public officials. This was also seen in the case of *Onwo v Oke*³⁷ where the appellant, a Christian, alleged that contrary to her religious belief, the respondents assaulted her and shaved her hair and locked her up in a room in compliance with the tradition of mourning one's deceased husband. The trial court held that fundamental rights are not enforceable against private individuals. The Court of Appeal in both cases reversed the decisions of the trial courts and held that such rights were enforceable against private individuals. The Court of Appeal held in *Onwo's case* that it has become necessary to extend the protection to private citizens. The decision of the Court of Appeal is a welcomed relief to individuals who have been subjected to discrimination by private individuals. However, this interpretation by the courts is still flawed and limited in scope as it is unclear if the protection extends to private organisations, institutions and workplaces.

The second limitation Okongwu identified from the provision of section 42 is that the constitution only gives protection to Nigerian citizens. In other words, the constitution fails to give protection to any other woman who is not a Nigerian citizen but who lives and

27. [2008] suit No FHC/PH/CS/198 (unreported).

28. [2001] 11 NWLR (pt. 723) 196.

29. [2004] NWLR (pt. 883) 196.

30. [2007] 9 NWLR (pt. 1091).

31. [2014] 11 NWLR (pt. 1418) 384.

32. [2017] LPELR-42582 (CA).

33. [2018] 17 NWLR (pt. 1649) 547.

34. Ovrawah, O. A. (2020). Nigerian Courts and Human Rights Jurisprudence: Promoting Non-Discrimination in the Context of Women's Rights <https://www.klri.re.kr:9443/bitstream/2017.oak/9802/1/18054k.pdf> (accessed on 21/06/2024).

35. Okongwu O.C. (2017) Perception of sex discrimination and sexual harassment among bank employees in Nigeria: a comparative study of the Nigerian and the British employee protection laws. PhD Thesis, De Montfort University, UK.

36. (1985) 6 NCLR 356.

37. (1996) 6 NWLR 584.

works in Nigeria. This is contrary to the provisions of Articles 2 and 7 of the Universal Declaration of Human Rights which Nigeria had signed and recognises that everyone is equal before the law irrespective of race or nationality.

In addition to the limitations of section 42, sections 15 and 17 of the Constitution are also ineffective in protecting women from workplace discrimination. This is because they fall under Chapter II of the Constitution, which is non-justiciable and cannot be directly enforced in a court of law (see Ikpeze 2015).³⁸ Consequently, victims of discrimination are left without legal recourse, undermining the practical application of these provisions in safeguarding women from workplace discrimination.

The Labour Act. The Nigerian Labour Act, Chapter L1, Laws of the Federation of Nigeria 2004 (the Labour Act), includes provisions aimed at safeguarding women in the workplace. Central to these protections are maternity rights, such as the entitlement to maternity leave and protection from dismissal during pregnancy or maternity leave, as outlined in Section 54 of the Act. However, the Labour Act lacks provisions addressing sex discrimination at work, thereby leaving acts of gender-based discrimination largely unregulated within its framework.

Certain provisions designed to protect women's health and welfare in the Act have been criticized for reinforcing discriminatory practices such as sections 55 and 56 of the Act which prohibit women from undertaking night work or working in underground mines. While these provisions were originally intended to protect women from perceived occupational hazards, they are regarded as perpetuating gender-based limitations on employment opportunities in industries where such roles are undertaken (Okongwu, 2021).

The issue of sex discrimination against women extends beyond the Labour Act to other laws in the Nigerian legal framework. The Criminal Code and Penal Code, for instance, contain provisions which are disproportionate in their application towards women when compared to men, reflecting deeply ingrained gender biases. Additionally, Nigerian Regulation, certain military regulations and tax laws have also been found to be discriminatory against women (Okongwu, 2021).

Despite these challenges, there has been a gradual progress in addressing discriminatory laws, such as the provisions of the Police Act 2004 that restricted women's professional opportunities and reinforced gender stereotypes. These provisions, such as those penalising female police officers for getting pregnant before marriage, requiring them to seek approval before marriage, and limiting their deployment to clerical roles, were repealed under the Nigeria Police Act 2020 (see Premium Times 2020).³⁹ The new Act underscores a commitment to promoting gender equality and ensuring non-discrimination within the police force. However, while these reforms represent

³⁸. Ikpeze O.V.C (2015). Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development. *Developing Country Studies*, Vol.5, No.18.

³⁹. Premium Times (2020) <https://www.premiumtimesng.com/news/more-news/432118-police-power-new-police-act-same-officers.html> (assessed on 16/12/2024).

important milestones, substantial gaps still remain in achieving gender equality in both workplace practices and the broader legal framework.

VAPPA. The Federal Government has also passed the Violence Against Persons Prohibition Act 2015 (VAPPA) which protects people from all forms of violence in public and private life. The Act prohibits physical, psychological, sexual and socio-economic violence mostly encountered by women and criminalises most forms of violence women face such as harmful traditional and widowhood practices, female genital mutilation and all forms of violence women encounter (Okongwu 2021). Many of the States in Nigeria have domesticated the law to the exception of two states where it has not received assent. States are encouraged to implement this Act as it is only through implementation will the rights of women and children will be protected from gender-based violence (see Premium Times 2022).⁴⁰

National Gender Policy. Further measures adopted by the government to eliminate sex discrimination is the creation of the National Gender Policy which is anchored within the framework of the Constitution to guarantee equality and right to freedom from discrimination (Nigerian National Gender Policy 2021–2026).⁴¹ The policy aims to build a just and gender-equitable society through the elimination of gender discriminatory policies and laws, mainstreaming gender and awareness raising, adoption and implementation of the Gender Policy at the Federal and State levels and the private sector, and the full domestication of the CEDAW amongst other objectives. However, the champions of this policy anticipate a challenge in achieving these policy objectives because of the barriers created by deep rooted patriarchal values that undervalue women's contributions and roles in national development. They believe that these patriarchal values will make it difficult to implement gender equality measures (National Gender Policy (2021–2026). Furthermore, national policies are generally principles or guidelines that are recommended for action to be taken to achieve a certain objective and are not enforceable by law and do not result in penalties for non-compliance (see Edozien 2024).⁴² A 2022 judgment of the Federal High Court purporting to enforce the 35% affirmative action for women's participation in politics recommended by the National Gender Policy has been appealed by the Federal Government and calls to implement the judgement has been ignored.⁴³

⁴⁰ Premium Times (2022) <https://www.premiumtimesng.com/news/top-news/563672-gender-based-violence-34-states-domesticate-nigerias-vapp-act-official.html>. See also VAPP Tracker <https://www.partnersnigeria.org/vapp-tracker/> (accessed on 21/06/2024).

⁴¹ Federal Ministry of Women and Gender Affairs: Federal Republic of Nigeria National Gender Policy (2021–2026).

⁴² Leroy C. Edozien (2024). Healthcare Waste Management Policy in a Lower-Middle-Income Country: A Case for the Adoption of the RADICAL Framework. *The Journal of Sustainable Development, Law and Policy*. Vol. 15:1. 81–105.

⁴³ See <https://www.thisdaylive.com/index.php/2022/04/10/as-court-orders-implementation-of-35-affirmative-action-for-women/>; see also <https://saharareporters.com/2022/07/11/affirmative-action-nigerian-government-appeals-high-court-judgment-compelling-it-reserve/>; and <https://www.premiumtimesng.com/news/top-news/685073-two-years-after-judgement-women-task-tinubu-on-35-affirmative-action.html>. (Accessed on 21/06/2024).

Other equality laws. There are other Equality Laws that protect women from workplace discrimination such as the HIV/AIDS (Anti-Discrimination) Act 2014 and Discrimination Against Persons with Disabilities (Prohibition) Act 2018. The 2014 Act protects women and other individuals living with or affected by HIV from discrimination in employment and safeguarding the rights of all affected employees ensuring equal access to job opportunities and mandates reasonable accommodations until they are no longer medically fit to work. The Act also encourages employers to create a safe working environment and to integrate anti-discrimination provisions into their workplace policies. The Lagos State government through its Protection of Persons Living with HIV and Affected by AIDS Law, 2007 makes similar provisions for people living with HIV in Lagos State by providing protection against discrimination and stigmatisation in the workplace for women and other individuals living with the disease. The law protects against discrimination in hiring, promotion and termination of the employee because of their HIV status and also prohibits employers from requiring mandatory testing of people with the disease and must maintain their confidentiality by not disclosing their HIV status without their consent. Violations under the 2014 Act and the Lagos Law such as the refusal to hire or wrongful termination would attract fines and potential imprisonment for the employers.

Women and other workers living with disabilities are also protected from discrimination under the Discrimination Against Persons with Disabilities (Prohibition) Act 2018. The Act prohibits employers from refusing to hire or firing someone based on their disability status, and employers are required to reserve at least five per cent of employment opportunities for persons with disabilities. Employers are also required to make reasonable accommodations for employees with disabilities by providing flexible work arrangements for them and make facilities and equipment accessible to them to effectively perform their duties as well as maintain their confidentiality. The Act also protects employees with disability from workplace harassment and victimisation.

Failed equality Bills. A number of Bills have been proposed to the National Assembly to check inequality and gender based discriminatory practices against women. The *Gender and Equal Opportunities Bill* was proposed in 2010 to help eliminate discrimination and prejudices against women which are influenced by stereotypes and cultural beliefs. The bill proposed to increase female participation in politics, prohibit domestic violence and end harmful traditional practices against women and girls. The bill failed primarily because the law makers believed that it was against society's culture and religious beliefs (Okongwu 2021).

The *Sexual Offences Bill 2013* was proposed to prevent and protect all persons from harmful and unlawful sexual acts and also contains provisions on discriminatory cultural and religious practices, sexual harassment and sexual and domestic violence against women. The bill has been passed by the National Assembly but has not been signed into law (Okongwu 2021). The *Labour Amendment Bill* introduced in 2016 sought to abolish some provisions in the Labour Act 2004 which were discriminatory against women such as restrictions on night work and work in an underground mines.

These bills have not been passed into law and Okongwu (2021) argued that the reason for the failure of these bills is the ingrained beliefs that women are subordinate to men and

any law that promotes equality between men and women are believed to be against God and the Nigerian culture and therefore would fail.

International legal framework

CEDAW. In addition to the Constitution, some treaties and conventions provide international legal framework for the promotion of non-discrimination and elimination of inequality against women. Nigeria is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which prohibits all forms of discrimination against women as well as its Optional Protocol that gives individual groups and organisations the right to complain if the government fails in its obligation to implement the policies of the convention. CEDAW and its Optional Protocol provide a strong international legal framework for ending gender discrimination and advancing equality of opportunities for women (Klugman and Twigg, 2016). However, any benefit individuals would have gained from CEDAW is diminished by the fact that Nigeria operates a dualist system and has to domesticate a treaty or convention for it to be applicable (section 12 of the Constitution). The CEDAW therefore is not enforceable within Nigeria because the government failed to pass into law a CEDAW Bill presented to it in 2007 (Okongwu, 2021).

ILO. Nigeria is a signatory to many International Labour Organisation (ILO) conventions such as the Equal Remuneration Convention, 1951 (Convention No. 100) and the Discrimination (Employment and occupation) Convention 1958 (Convention No. 111). The conventions aim to eliminate gender-based wage discrimination and all forms of gender-based discrimination in employment. They play a crucial role in improving the economic status of women and advancing women's rights in the workplace. Convention No. 111 requires countries to develop policies that promote equality and remove barriers that prevent women from accessing jobs, receive equal treatment and achieve professional advancement on equal terms as men. Nigeria, however, though being a signatory to this convention has not domesticated it.

Without domesticating international treaties, their provisions do not have direct legal effect within the country thereby making it difficult for individuals and groups to rely on them in domestic courts (Ekhaton and Obani 2022).⁴⁴ This limitation emphasizes the importance of incorporating treaties into national laws to enhance their effectiveness and provide a stronger legal framework for addressing gender inequality. However, Ekhaton (2020)⁴⁵ argues that non-domestication should not be used as an excuse by the Nigerian government to violate its international obligations to enforce treaties contrary to section 19(d) of the Constitution that promotes respect for international law and treaty

⁴⁴. Ekhaton, E.O. and Obani, P., (2022), Women and environmental justice issues in Nigeria: an evaluation. In: Dawuni, Jarpa (Ed.), *Intersectionality and Women's Access to Justice*. Lexington Books Publishing, Lanham, MD, pp. 259–283.

⁴⁵. Ekhaton EO (2020), 'International Environmental Governance: A Case for Sub-regional Judiciaries in Africa' in Michael Addaney and Ademola Jegede (eds) *Human Rights and the Environment under African Union Law* (Palgrave Macmillan) pages 209-231.

obligations, and Article 27 of the Vienna Convention on the Law of Treaties that stipulates that member states should not use the provisions of their internal law as a justification not to perform treaty obligations.

The failure of the CEDAW Bill was attributed to the fact that the convention promotes the equality of women which the citizens feared was anti-God and anti-family as they believed that the subordination of women to men was a social order designed by God and a challenge to that was a challenge to God (Iman, 2010).⁴⁶ The failure of the Bill was also attributed to lack of a clear advocacy message, effective public education and a failure to address the fears and insecurities raised in the public mind about the Bill (Iman, 2010; see also Okongwu, 2021).

Regional legal framework. Nigeria is also a signatory to the African Charter on Human and People's Rights (the Charter) and has ratified and domesticated the Charter through the African Charter (Ratification and Enforcement) Act 1983. The Charter provides a framework for the promotion and protection of human rights of people in Africa. The Charter however has been criticized and found to be inadequate in addressing in detail various discriminatory issues women encounter such as cultural harmful practices women in Africa encountered in their daily lives (Iman, 2010; see also Ayeni, 2016⁴⁷). It failed to address inequities in laws governing property distribution and customary practices related to inheritance and succession. A major limitation of the Charter is that its non-discrimination provision can only be invoked in relation to the implementation of a right under the Charter (Iman, 2010). Furthermore, the Charter operates subject to the Constitution, whose hierarchical structure creates constraints in addressing systemic discrimination against women, as any conflict between the Charter and the Constitution must defer to the latter.

Despite these limitations, the courts were creative in applying the provisions of the Charter to address discriminatory laws (Ekhatior, 2015).⁴⁸ In *Mojekwu v Ejikeme*⁴⁹ the Court of Appeal relied on the Charter to abrogate a discriminatory custom that prevented a daughter from inheriting from her deceased father's estate. Similarly, the ECOWAS Court of Justice has relied on the Charter to enforce socio-economic rights, recognising its superiority over domestic non-justiciability provisions in certain circumstances. In *SERAP v Nigeria*⁵⁰ the ECOWAS Court emphasized that rights guaranteed by the Charter are justiciable before the court, underscoring Nigeria's obligations under international law to enforce socio-economic rights even where the Constitution imposes restrictions (Shehu, 2013).⁵¹

⁴⁶. Iman A.M. (2010). Adopting Women's Human Rights Legislation in Nigeria: A Sythesis Analysis and Report. InfoVision Limited.

⁴⁷. Ayeni V.O. (2016) The Impact of the African Charter and the Maputo Protocol in Selected African States . Edited by Ayeni V.O. Pretoria University Law Press.

⁴⁸. Ekhatior EO (2015) The impact of the African Charter on Human and Peoples' Rights on domestic law: a case study of Nigeria. Commonwealth Law Bulletin 41(2): 253–270.

⁴⁹. [2000] 5 NWLR 402.

⁵⁰. [2009] ECW/CCJ/APP/0808.

⁵¹. Shehu A.T. (2013). The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience. Journal of Sustainable Development Law and Policy Vol. 2 Issue 1 (2013), pp. 101-120.

The Charter made provisions for the adoption of protocols to complement the agreement in areas it was found lacking. This led to the adoption of the Protocol to the African Charter on the Rights of Women in Africa (also known as the Maputo Protocol) in 2003 ratified in Nigeria in 2004. The Protocol addresses the issues which African women encounter by seeking to strengthen their control over their roles as mothers and in the community as a whole (Iman, 2010). The Protocol sought to ensure that women's rights are protected so they could enjoy in full all their human rights. It covers a host of issues affecting African women including elimination of all forms of discrimination against women and elderly women, disabled women, women's dignity and their human and legal rights, prohibition of cruel, inhuman and degrading punishment and treatment, widows' rights and inheritance rights. The Protocol also makes provisions for State Parties to undertake to provide appropriate remedies for women whose rights have been breached to seek such remedies as would be determined by competent authorities provided for by the law (Iman, 2010). The protocol has been criticized for being vague and not being inclusive enough by failing to explicitly name and address more harmful cultural practices as a way of eliminating ambiguity and promoting more robust enforcement (Danpulo 2017).⁵² Danpulo argues that by naming specific harmful cultural practices such as female genital mutilation has influenced some African countries to enact laws that punish these practices. He believes that because some of the provisions are vague, the protocol does not facilitate implementation. Unlike the Charter, the Protocol has not been domesticated in Nigeria thereby allowing some of the harmful practices to persist limiting its effectiveness in bringing about substantial change (Oyekanmi 2021).⁵³ Some provisions of the Protocol have been indirectly incorporated through other legislative instruments such as the Violence Against Persons (Prohibition) Act 2015 (VAPPA) which is relevant in protecting women against violence by criminalizing certain harmful cultural practices that affect women (Ayeeni, 2016) but Oyekanmi (2021) argued that this has not been sufficient to address violence against women.

Are the laws effective? Despite the legal provisions in this area, laws have not been effective in protecting women from sex discrimination in Nigeria. The application of the three legal systems, namely common law, customary law and sharia law is flawed with contradictions and inconsistencies and makes it difficult to harmonise legislation and eliminate discrimination. Any progress achieved by International Conventions and legislation has been weakened by the application of customary and religious laws. In spite of limited protection afforded to women, they cannot seek protection under the CEDAW when they are victims of discrimination because it has not been domesticated in Nigeria and therefore has no effect and is inapplicable. However, creative use of the CEDAW could make it effective in employment with the enactment of section 254(c)(2) of

⁵². Danpullo, R. I. (2017). The Maputo Protocol and the Eradication of the Cultural Woes of African Women: A Critical Analysis. *RiA Recht in Afrika| Law in Africa| Droit en Afrique*, 20(1), 93-111.

⁵³. Oyekanmi, O. (2021). Domesticating the Maputo Protocol: Violence and Women's Political Participation in Nigeria. *International Journal of Advanced Research in Public Policy, Administration and Development Strategies (IJARPPADS)* Volume 5, Number 1 September, 2021 pp. 116-128.

Constitution (Third Alteration) Act 2010 which empowers the National Industrial Court of Nigeria to apply any ratified international convention, treaty or protocol relating to labour, employment, workplace or industrial relations in order to achieve international best practice (Okongwu, 2021). Therefore, the provisions of the CEDAW and its optional Protocol that deal with discriminatory practices against women such as discrimination or sexual harassment at work will be directly enforceable without the need for domestication of the Protocol (Ayeni, 2016).

However, it is necessary to have a single law on sex discrimination to give women an opportunity to seek redress when they have become victims of sex discrimination both in employment and in their private lives without jumping through hoops and exploring creative ways to utilize the laws in protecting them.

The next section will look at the UK's position and its legal framework on sex discrimination. The UK has been selected as a comparator because part of the Nigerian legal system is based on the English common law due to the Nigerian history as a former British colony. Nigeria therefore has some similarities in its legal system with that of the UK and lessons which will be learned from studying the UK's well developed sex discrimination law will form the basis for proffering solutions to Nigeria.

Overview of the United Kingdom position

Historical background

As far back as the nineteenth century, women were legally placed under the authority of men and a married woman was legally regarded as a minor with absolute control of her and her property residing in her husband. Her existence was under the authority of her husband, and she had no right to custody of their children (Fredman 2002). Women were precluded from participating in politics due to the belief that they were irrational beings and should be restricted to the home. A woman's natural position was believed to be that of social and domestic life. When women were later granted the right to vote at the local levels with the exception of married women, this was interpreted not to include the right to contest for an election as women were deemed not fit to hold public office (see Fredman, 2002).

Sex Discrimination Legislation was introduced as part of a political initiative to promote equality for men and women on the grounds of sex and marital status. An attempt was made to alleviate women's plight through *the Sex Disqualification (Removal) Act 1919* enacted by Parliament to remove discrimination by making it unlawful to disqualify anyone based on their sex.⁵⁴ The Act made it possible for women to go into some occupations such as holding civil or judicial offices, or teaching at the universities, which were initially restricted to men during the world wars. At this time, trade unions fought for women's rights and pushed for equal pay between men and women and the right to maternity pay (Deakin and Morris, 2009).⁵⁵ The Trade Union Congress later pushed for

⁵⁴. Sec. 1 of the Sex Disqualification (Removal) Act 1919.

⁵⁵. Deakin, S. and G. Morris (2009). *Labour Law 5th Ed.*, Hart Publishing.

the government to enforce the International Labour Organisation (ILO) Convention No. 100 of 1951 on Remuneration for Men and Women Workers (Deakin and Morris, 2009), which proposed the principle of equal pay for men and women for work of equal value without any discrimination based on sex.⁵⁶ Some local governments applied this principle of equal pay for equal work but met with some resistance. In *Roberts v Hopwood*,⁵⁷ Poplar Borough Council resolved to pay the same wage to their lowest grade of staff regardless of their sex, but the district auditors challenged this decision on the grounds that the pay was excessive and there was no lawful ground to pay women the same rate as men. The House of Lords held that though the councillors had discretion to set the wage rate but that they had acted unlawfully by exceeding their discretion by paying above the market rate and paying women the same rate as men. The 1919 Act did not achieve its aims because women were still denied the rights to be paid on an equal basis as men for jobs of equal value although they had been given opportunities to work in the civil service and teaching professions.⁵⁸ Women were still treated as having inferior rights to men and there were still many barriers which prevented women from participating fully in the country's economic activities.⁵⁹ It was the practice at the time that women were employed in jobs which were regarded as women's jobs and such jobs were regarded as an extension of their traditional domestic role.⁶⁰ An Anti-discrimination Bill which was introduced in Parliament to promote equal rights between men and women in employment were opposed by certain members of Parliament on the grounds that women should remain in traditional roles because they were incapable of carrying out functions in traditional men's roles and the view was that women chose not to compete with men in these roles (Okongwu, 2017).

In 1955 the government introduced equal pay for equal work to the civil service and the public sector (see Iglkowski 2015).⁶¹ Initially, the government was reluctant to legislate on the issue but after much social confrontation, *the Equal Pay Act 1970* was enacted to remove pay inequality by reinforcing equal pay for equal work of the same value (Deakin and Morris, 2009). This Act came into force in 1975, the same year the Sex Discrimination Bill (formally Anti-discrimination Bill) was passed into law as *the Sex Discrimination Act 1975 (SDA)*. The SDA encompassed a more general principle of equal treatment by removing discrimination either directly or indirectly on the grounds of sex in education, employment or provision of services (Fredman, 2002). The Act adopted the concept of disparate treatment and adverse effect used in the US Civil Rights Act 1964 and termed them direct and indirect discrimination respectively.

⁵⁶. ILO Convention No. 100 of 1951.

⁵⁷. [1925] AC 578.

⁵⁸. "Equal Pay" HC Deb 13 March 1952 vol. 497 cc1786-94.

⁵⁹. "Anti-Discrimination Bill" HC Deb 28 January 1972 vol. 829 cc1812-46.

⁶⁰. "Northern Universities' Entrance Standards" HL Deb 13 July 1971 vol. 322 cc183-8.

⁶¹. Iglkowski V. (2015). "A perfect nuisance": The history of women in the Civil Service Gov.uk <https://history.blog.gov.uk/2015/05/26/a-perfect-nuisance-the-history-of-women-in-the-civil-service/>.

The legal framework in the United Kingdom

The Sex Discrimination Act was enacted to restrict discrimination on the grounds of sex or marital status, and applied only to education, employment and provision of services. It included acts carried out by public officers and on behalf of the crown covering both contractual and non-contractual obligations (Fredman, 1992).⁶² The provisions of the Act applied equally to men and women with the requisite modifications,⁶³ but the special treatment given to women in connection to pregnancy or childbirth was not to be taken into account when applying the Act to men.⁶⁴ There were exceptions where discrimination was allowed such as in organised religion, charities, sports, acts done under statutory authority etc.⁶⁵

The Sex Discrimination Act was later repealed and re-enacted into the Equality Act 2010. The purpose of *the Equality Act* was to unify all the anti-discrimination legislation⁶⁶ and make it easier to administer by a single commission. The Equality Act primarily contains similar provisions as the now defunct *Sex Discrimination Act* except for some modifications in the wording. The Equality Act also clarifies the meaning of discrimination, harassment and victimisation and applied them across all “*the protected characteristics*”. Section 4 of the Act lists the protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief and sexual orientation. For the purpose of this paper, consideration will only be given to the protected characteristics of sex except in some cases where consideration will be given to the other characteristics if necessary to support the analysis.

The Equality Act 2010 protects against four types of discrimination namely direct discrimination, indirect discrimination, harassment and victimisation but for the purposes of this paper, focus will be on only direct and indirect discrimination as these are the provisions of the Act that address the issues under discussion.

Direct discrimination. Section 13(1) of the Equality Act defines direct discrimination as –

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

From the above definition, in bringing a case of direct sex discrimination, the claimant has to show that she has been treated less favourably than a man because of her sex for there to be a finding of liability. To achieve this, the claimant has to be compared to a person or a hypothetical person of the opposite sex in a similar or comparable situation. This provision applies equally to a man with the necessary modifications. To establish a less favourable treatment by reason of one’s sex, it is enough that a person is deprived of a choice which was valued by him/her and not necessary to prove that that which was lost was better.⁶⁷

⁶². Fredman, S. (1992). European Community discrimination law: a critique. *Indus. LJ*, 21, 119.

⁶³. Sec. 2(1) of the Sex Discrimination Act.

⁶⁴. Sec. 2(2) of the Sex Discrimination Act.

⁶⁵. Sections 19, 43, 44 and 51 of the Sex Discrimination Act.

⁶⁶. Discrimination on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

⁶⁷. *R v Birmingham City Council ex parte Equal Opportunities Commission* [1989] AC 1155.

The main basis of direct discrimination is to prevent anyone from being treated adversely or to be pre-judged on the basis of a commonly held view about a group he or she belongs to but rather to be treated on their own merits and qualities. Lord Justice Mummery in *Aylott v Stockton on Tees Borough Council*⁶⁸ found that direct discrimination can occur when assumptions are made about a claimant in regard to their group characteristics irrespective of whether the claimant or most members of the group have those characteristics. Therefore, a decision to treat a woman in a particular way for reasons which contain generalised assumption about a woman's behaviour is a decision made because of her sex. Discrimination by perception and association are also protected. Section 14 of the Equality Act intended to introduce 'dual characteristics discrimination' in direct discrimination claims otherwise known as intersectional discrimination in order to protect on more than one ground but this section was never passed into law for various reasons.

An important factor in direct discrimination is that the motive of the discriminator is irrelevant but what is relevant is the fact that the act is done because of a protected characteristic.⁶⁹ It is sufficient to establish a link to show that the claimant was treated less favourably due to the acts of the discriminator, and the intention or the motive of the discriminator was not a necessary condition to liability.⁷⁰ The important factor was that the woman would have received the same treatment as the man but for her sex. This precludes direct discrimination from being justified and would not allow benign motive for distinguishing between men and women to act as a defence to direct discrimination.⁷¹

Burden of proof. Generally, direct sex discrimination cases are difficult to establish because claimants found it difficult to prove that the discriminator's actions were as a result of the claimant's sex. This is because the discriminator could give various reasons for the treatment of the claimant which they could allege was not based on their sex. The Burden of proof has been incorporated into the Equality Act 2010 through section 136(2) and (3). If there are facts from which the court can confirm that discrimination has occurred, the court should infer that an unlawful discrimination has occurred unless the employer could give a reasonable explanation to satisfy the court.⁷² Once the claimant has established the facts, the courts have a statutory obligation to shift the burden of proof to the respondent to prove that a breach has not occurred.

The need to shift the burden of proof from the claimant to the respondent as soon as the facts have been established is because direct discrimination is often hidden which makes it difficult for claimants to obtain information about the existence of discrimination. Often, the relevant information needed to establish a sufficient amount of evidence of the occurrence of discrimination is usually with the respondent which the claimant will not

⁶⁸. 2010 EWCA Civ 910 CA.

⁶⁹. See *R (on the application of E) v Governing Body of JFS* [2009] UKSC 15.

⁷⁰. *R v Birmingham City Council ex parte Equal Opportunities Commission* [1989] AC 1155.

⁷¹. See *Moyhing v Barts & London NHS Trust* [2006] IRLR 860. See also *Amnesty International v Ahmed* [2009] UKEAT 0447/08.

⁷². This rule was developed in the racial discrimination case of *Khanna V Ministry of Defence* [1981] IRLE 331 and endorsed in *Baker V Cornwall County Council* [1990] IRLR 194.

have access to. To lighten the burden on the claimant, the claimant must establish primary facts on a balance of probabilities from which it may be presumed that the principle of equal treatment was not applied to them to raise a presumption of unlawful discrimination. As soon as the claimant establishes this fact, the burden must shift to the respondent to prove that he had not in fact discriminated against the claimant.⁷³

Indirect discrimination. Section 19 of the Equality Act defines indirect discrimination as –

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

The purpose of indirect discrimination law is to eliminate practices which have a disproportionate impact on women and are not justifiable for any reason. The provision, criteria or practice (PCP) must put or would put workers with the protected characteristics at a disadvantage when compared with workers who do not share the same characteristics. The PCP does not have to apply to others but what is required to test if it is discriminatory is to extrapolate it to others. Unlike the direct discrimination provision which ensures equal treatment, the indirect discrimination provision looks beyond formal equality towards more substantive equality of results. In *Clarke v Eley (IMI) Kynoch Ltd*⁷⁴ Browne-Wilkinson J stated that the reason for the introduction of the concept of indirect discrimination was to seek to eliminate those practices which had a disproportionate impact on women and were not justifiable for other reasons.

In previous legislation, a burden was placed on the claimant to use statistical evidence to prove that the proportion of her group who could comply with a condition or a requirement was considerably smaller than the group who could comply. The tribunal encountered problems in deciding where the pool of comparable workforce should be chosen from, whether nationally, locally or within that particular workforce. Under the current legislation, the claimant now only needs to show that she or her group has been placed at a particular disadvantage than the other group. Lewis is of the opinion that the pool should consist of the group the provision, criteria or practice affects or would affect either negatively or positively and it should test the discrimination complained of (Lewis, 2011).⁷⁵ In order to measure the disadvantage, the Act requires comparing the proportions of people affected rather than absolute numbers and those who do not have an advantage or disadvantage should not be brought into the pool.⁷⁶ It was held in *Ministry of Defence v DeBique*⁷⁷ that there is no universal law that states what the pool should be in a particular case but that the tribunal should consider their position in respect of the different pools

⁷³. Article 4 of the Council Directive 97/80/EC Burden of Proof in Sex Discrimination which is the Directive the Burden of Proof in discrimination cases was introduced into UK law.

⁷⁴. [1982] IRLR 482.

⁷⁵. Lewis T. (2011). An Adviser's Handbook. LAG.

⁷⁶. See *Somerset County Council and Secretary of State for Children, Schools and Families v Pike* (2009) IRLR 870 where it was held that the appropriate pool for assessment for retired teachers who were in receipt of pension but returned to work on a part time basis expecting further pension would be all retired teachers and not all teachers. See also *London Underground v. Edwards* [1999] I.C.R. 494.

⁷⁷. [2010] IRLR 471.

available to them and choose from the pool which they consider will realistically and effectively test the particular case before them.

In indirect discrimination cases, a claimant is not required to establish the reasons why the PCP puts them at a disadvantage but to show that it does put them at a disadvantage. In the race discrimination case of *Essop and others (Appellants) v Home Office (UK Border Agency) (Respondent)*,⁷⁸ the Supreme Court overturned the Court of Appeal decision that required members of the disadvantaged group to show why they have suffered a particular disadvantage, and required each claimant to prove that he suffered a disadvantage. The Supreme Court held that for a finding of indirect discrimination to be valid, the provision of the Act requires that a PCP puts a group at a disadvantage but there is no express requirement for an explanation of the reasons why that PCP puts the group at that disadvantage when compared with others. This ruling is important because a claimant is not placed with the onerous burden of proving the reason why the PCP puts his group at a disadvantage but can succeed by merely showing through statistics a causal link between the PCP and the disadvantage. The Supreme Court also held that the PCP does not have to put every member of the group at a disadvantage but that the proportion of the group who could comply with the PCP is smaller than the proportion who could comply. The disadvantage suffered by the individual must correspond with the disadvantage suffered by the group. Therefore, an identifiable workforce must be shown to have suffered a particular disadvantage which the claimant shared or to a group to whom it potentially applies.

A key difference between direct and indirect discrimination is that indirect discrimination can be justified. In indirect discrimination, a respondent can escape liability if he could show that the provision, criterion or practice was a 'proportionate means of achieving a legitimate aim.' Mummery LJ stated in *R (Elias) v Secretary of State for Defence*⁷⁹ that in applying the proportionality test, the objective which the employer was trying to achieve should be considered to determine if the objective and the measure adopted were sufficiently important to justify limiting one's fundamental right. In a bid to justify indirect discrimination, the discriminatory act had to be based on evidence and not on stereotypical assumptions about the group. It was expressed in *Allonby's case* that once PCP which has a disparate impact was identified, the tribunal was required to give a critical evaluation of the following: whether the employer's reasons demonstrated a real need; if there was such a need; a consideration of the seriousness of the disparate impact on women; and an evaluation of whether the need outweighed the disparate impact. The onus was on the employer to show that the requirement was objectively justified for economic, administrative or other reasons but he is not required to show that he balanced the adverse impact of the requirement against the needs of the company. It was the duty of the tribunal to balance the adverse impact against the needs of the employer and the aim he intended to achieve taking into account the circumstances and the degree of the discrimination caused to the employee. The tribunal had to be satisfied that the requirement was introduced for the reason which the employers put forward. The claimant could put

⁷⁸. [2017] UKSC 27.

⁷⁹. [2006] IRLR 934.

forward alternative criteria that could have been adopted by the employer which she thought reasonable and if the tribunal thought that the employer should have considered and adopted them, the tribunal may find that the defence was not proved. Whether a requirement was justifiable was a question of fact left by Parliament for the tribunal to discover and if there was evidence for which it found a requirement justifiable, its findings were not liable to be disturbed on appeal.

Policy evaluation

Nigeria and the UK are dualist countries which means that they have to enact enabling laws for International Conventions, treaties and protocols to be applicable. The UK government has established laws to help address issues of discrimination through the provisions of the *Equality Act 2010* which recognises sex discrimination and prohibits its occurrence. The Act is the key legislation on gender equality issues. It was enacted to eliminate all forms of discrimination directly or indirectly against women. An important characteristic of this law is that through its direct discrimination provisions, it prevents a woman from being treated less favourably than a man because she is a woman. Where the discriminator acted on discriminatory and non-discriminatory grounds, they must be held liable as long as part of the reason for the treatment was because she is a woman.⁸⁰ The direct discrimination provision also prevents a woman from being pre-judged on the basis of a stereotype because of a generalised assumption that people of a particular sex possess or lack certain characteristics. Therefore, a decision to treat a woman in a particular way for reasons which contain generalised assumption about a woman's behaviour is a decision made on the grounds of her sex⁸¹ and should be prohibited. Once direct discrimination has been established, the law does not allow any justification to be put forth and it is irrelevant that a benign motive was the reason for the less favourable treatment.⁸² It is also not enough to justify the discriminatory act on the basis that it serves the interest of the employer or social policy or market policy objective or that it is expensive to rectify (Fredman, 1992). In establishing a case of direct sex discrimination, the law requires that the treatment given to the female victim should be compared with how a man in the same circumstances as the woman is treated or would have been treated. This therefore requires that where there is no actual comparator, a hypothetical comparator can be used to compare the woman's treatment in order to establish a less favourable treatment. The law also requires that this comparison test must be carried out otherwise a claim for less favourable treatment will fail.⁸³ It is irrelevant if the outcome of the treatment is good or bad, what matters is the fact that both sexes have been treated equally (Fredman, 1992).

Another important attribute of the discrimination law in the UK is that through its indirect discrimination provisions, it aims to eliminate policies, criterion or practices that has a disproportionate impact on women which puts them at a disadvantage when

⁸⁰. See *Owen and Briggs v James* [1982] ICR 618.

⁸¹. *Horsey v Dyfed County Council* [1982] IRLR 395.

⁸². See *James v Eastleigh Borough Council* [1990] 2 AC 751.

⁸³. See *Marks & Spencer v Martins* [1998] IRLR 326.

compared to men. The discriminator does not have to have a legitimate reason for having such PCP. To establish a claim in indirect discrimination, it is sufficient for the claimant to show that the PCP produces a particular disadvantage to women and to the claimant, and it is not necessary for the claimant to show why the PCP produced the disadvantage.⁸⁴ The law does not require that the PCP should put every member of the group at a disadvantage but it is sufficient if some members are shown to suffer a disadvantage.⁸⁵ Therefore any laws, policies, condition and practices which are found to be discriminatory towards women will be nullified.

Another characteristic of the indirect discrimination law is that it demands a connection between the challenged practice and the claimant's group by requiring that the practice 'puts' the claimant's group at a particular disadvantage. The PCP does not have to put every member of the group at a disadvantage, what is required is that the proportion of the group who could not comply is smaller than the proportion of the group who could comply. As was seen in *London Undergrounds v Edwards* where it was found that a single mother who could not comply with the requirements of the employer due to her childcare needs was sexually discriminated against by the employer. In addition to this, the woman does not have to prove 'why' the PCP put her and other women at a disadvantage but to show a causal link between the PCP and the disadvantage. Once a woman has established a prima facie case, the burden shifts to the discriminator to objectively justify the PCP if it is a proportionate means of achieving a legitimate aim. The objective the discriminator was trying to achieve will be considered to determine if measures he adopted were sufficiently important to justify limiting the claimant's fundamental rights. The onus is on the discriminator to show that the requirement was objectively justified for economic or administrative reasons. To consider whether it was justified, the court would consider the discriminator's reasons, to determine if it demonstrated a real need, and how serious the adverse impact was, and whether the need outweighed the adverse impact. It is the duty of the court to balance the adverse impact against the needs of the discriminator and the aim he intends to achieve.

The Equality Act requires public bodies when exercising their functions to have due regard to the need to eliminate unlawful sex discrimination and harassment as well as promote equality of opportunities between men and women (UK CEDAW report 2011).⁸⁶ It also permits employers to use positive measures to remove the disadvantage experienced by women and to reduce under-representation and meet particular needs if they are proportionate means of achieving a legitimate aim. The Equality Act is supplemented by other legislation such as the Work and Families Act 2006, Shared Parental Leave Regulation 2014 and the Employment Rights Act 1996 to help remove inequality and achieve a work-life balance for parents which has seen an increase in the level of female participation in the labour market (ONS 2013)⁸⁷ and have created a choice for parents to

⁸⁴. See *Essop v Home Office* [2017] UKSC 27.

⁸⁵. See *Eweida v British Airways* [2010] EWCA Civ 80.

⁸⁶. United Nations Convention on the Elimination of All Forms of Discrimination Against Women United Kingdom's Seventh Periodic Report June 2011.

⁸⁷. Women in the Labour Market 2013 Office for the National Statistics.

meet their work and domestic responsibilities and give women chances of progressing in their career.

There has been some improvement in the UK of women making progress in areas of their lives where they experience inequality. This improvement has been attributed to the various laws and policies such as the Equality Act 2010 enacted to eliminate all forms of discrimination directly and indirectly; the Work and Families Act 2006 enacted to promote family-friendly policies to help parents achieve a balance between work and family responsibilities; Shared Parental Leave Regulation 2014 enacted to give parents the options of sharing their parental leave with their spouses to look after their newborn and enable either parent go back to work; and Statutory Guidance which promotes equality and improves other work-life balance and family-friendly measures (Okongwu 2017). According to the final report of the Equalities Review, legislation and policies have in the past 60 years seen a recognition of rights of various disadvantaged groups and have led to improvements to their chances in life and affording them greater chances of equality (Equalities Review 2007).⁸⁸

There is evidence to suggest that over time the laws, government policies and non-policy measures have helped in closing the inequality gaps between men and women. Data shows that the employment rate for women living with dependent children has increased from 63.1% in 1997 to 77.2% in 2023 (ONS 2023)⁸⁹ an indication that the family friendly laws are helping women with children participate in the workforce (Fawcett Society, 2018).⁹⁰ Though there is still a lot of work needed in this area, the gender pay gap has decreased from 27.5 in 1997 to 14.3% in 2023 (ONS 2023).⁹¹ These indicators of inequality shows that inequality between men and women are gradually reducing over time albeit very slowly. Female Members of Parliament who were elected at General Elections increased from 3.0% in 1979 to 33.8% in the last General Election in 2019 (Commons Library, 2023),⁹² and women on board of companies increased from 10.5% in 2010 when record began to 40% in 2022 (FTSE, 2023;⁹³ see also Women on Boards report,2013⁹⁴). These are remarkable improvements of women getting into leadership positions where there were once highly under-represented. The 40% representation on board of companies is also a great achievement for the UK because this success has been achieved 3 years ahead of the target end date of 2025 and was achieved

⁸⁸. Equalities Review (2007). *Fairness and Freedom: The Final Report of the Equalities Review*.

⁸⁹. ONS 2023 – Employment rates for men and women living with and without dependent children in the UK. Office for National Statistics UK <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentratesformenandwomenlivingwithandwithoutdependentchildrentableq> (accessed on 17/11/2023).

⁹⁰. The Fawcett Society, *Sex Discrimination Law Review 2018*.

⁹¹. ONS 2023 – Gender pay gap in the UK. Office for National Statistics UK <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2023> (accessed on 17/11/2023).

⁹². Commons Library 2023 – Women in politics and public life. Commons Library <https://commonslibrary.parliament.uk/research-briefings/sn01250/> (accessed on 17/11/2023).

⁹³. FTSE Women Leaders Review: *Achieving Gender Balance 2023*.

⁹⁴. Women on Boards report 2013. <https://ftsewomenleaders.com/wp-content/uploads/2015/08/2013-second-annual-review.pdf> (accessed on 17/11/2023).

entirely under voluntary means and not by pressure from the government or prescribed quota (FTSE, 2023). This goes to show that people's conceptions and attitudes towards women in the UK has changed over time through some of the measures laid down by the government which has resulted in companies being willing to include women in senior leadership positions and in participating in public life without the need to use laws or compulsion to achieve it. The UK government had a number of non-policy measures which it implemented to target gender stereotypes, challenge cultural expectations and promote equality between men and women. The government supported schools and other agencies to tackle gender stereotypes through education and training in relation to subject choices and programs designed to improve access to various careers and apprenticeship to under-represented sections of society (UK CEDAW Report, 2011). The government was also committed to increasing the number of girls in STEM subjects (Science, Technology, Engineering and Mathematics) and to help them develop to their full potential in career choices as well as improve gender balance in those jobs where women were under-represented. There were also educational programs which equipped women to participate in decision making at all levels and there were regulatory controls against the media which challenged portrayal of gender stereotype or casting women in a negative manner.⁹⁵ This was a major move for the government to focus attention at the roots of gender stereotype and discrimination by targeting the root of discrimination through educating children and changing their conception about gender. These non-policy measures have proved to be advantageous due to the change in attitudes towards women which can be evidenced in the gradual reduction of inequality between men and women, and any persisting inequalities can be challenged with laws.

In the Nigerian context, the Constitution along with international treaties such as the African Charter provide the legal framework for addressing sex discrimination in the workplace. The courts have also played a pivotal role by demonstrating the judiciary's commitment in upholding constitutional rights through cases before it such as the landmark case of *Omolola Olajide v the Nigerian Police Force*. Similarly, in and *Ukeje v Ukeje* the Supreme Court affirmed the inheritance rights of female children under the Igbo customary law, dismantling long-standing discriminatory practices. The case illustrates the conflict between customary practices and the Constitution and is used to emphasize the challenges women face in Nigeria where customary law excludes them from inheritance. The Supreme Court in the case emphasized that the Igbo customary law conflicted with the fundamental rights provisions contained in section 42 and rendered the discriminatory customary law void.

The case is central to the discourse on legal reform, highlighting the need to align customary practices with constitutional principles that protect women from discrimination and demonstrates the role of the judiciary in ending discriminatory practices (see Diala 2018; Ekhaton 2019).⁹⁶ According to Ekhaton, the case is lauded for ending the

⁹⁵. The government exercises this control through the Office of Communications (a Statutory Body) who has contracted the responsibility for maintaining broadcast advertising standards to Advertising Standards Agency.

⁹⁶. Ekhaton, E. (2019), 'Protection and Promotion of Women's Rights in Nigeria: Constraints and Prospects' in Michael Addaney (ed.) *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development* (Eleven International Publishing, Netherlands).

judiciary's tolerance of discriminatory customs against women and the contributory factor to this progress is attributed to the elevation of female justices to the Supreme Court and the appointment of the first female Chief Justice in Nigeria. He proposes the amendment of the Nigerian Constitution to remove ambiguities and ensure explicit protection of women's rights.

While section 42 of the Constitution offers some protection against sex discrimination, its scope is limited. As highlighted earlier, the section does not explicitly address discriminatory actions by individuals, private organizations, or workplace policies, nor does it protect non-Nigerian women living and working in Nigeria. Sections 15 and 17 of the Constitution are similarly limited due to their non-justiciable nature, which prevents individuals from seeking redress for violations, rendering these provisions aspirational rather than legally binding. Other aspects of the Constitution, such as section 26(2)(a) have been found to be discriminatory against women. This section allows a male Nigerian citizen to confer citizenship on his foreign wife but denies this right to Nigerian women, thereby undermining their ability to enjoy equal family and professional rights. However, the courts, through creative application of the African Charter, can provide a mechanism to address some of these limitations and, in effect, combat the systemic discrimination against women in the workplace.

The inconsistencies in the Nigerian laws and other discriminatory laws which cause inequality and discrimination against women demonstrates the need to have a single coherent and comprehensive legislation on discrimination which women can rely on when they have become victims of sex discrimination. However, it is necessary that non-policy measures are designed and implemented to help change individuals' attitudes and conceptions about gender as these need to change alongside the implementation of laws.

The need for a national legislation for the protection of women from workplace discrimination

To protect women at work in Nigeria and ensure their progress within society, equal treatment under the law is necessary for them to realize their full potential and enjoy equal opportunities with men at home, in society and at work. A comprehensive anti-discrimination law needs to be formulated in Nigeria to deal with issues of sex discrimination both in private and public including in employment and ensure that women are not treated less favourably than a man simply because she is a woman. A difference in treatment for the reason of her sex should be declared discriminatory and prohibited. Furthermore, any laws, policies or practice which puts women at a disadvantage when compared to men should be declared discriminatory and nullified. A single comprehensive law is needed because the Nigerian legal system makes it difficult to achieve gender equality due to the inconsistencies created by the application of the tripartite legal system. A single equality law will provide a uniform framework which will give clear guidelines and definitions, reduce ambiguities, ensure a cohesive strategy, enhance understanding of the law amongst the public and employers, and ensure consistent enforcement. The law can be extended to protect against other forms of discrimination and sexual violence.

Furthermore, to eliminate sex discrimination and promote equality between men and women in Nigeria, there needs to be a shift in the mindset of individuals about gender and gender roles and their discriminatory effect on women. The Nigerian government can achieve this by implementing non-policy measures to change attitudes towards women, similar to the UK's approach, where the government adopted various strategies to address the root causes of gender stereotypes and discrimination. The UK government tackled gender stereotypes through education and training and encouraged girls to go into male dominated fields, created educational programs that equipped women to participate in decision making at all levels, and used control mechanisms on media outlets to restrict the negative portrayal of women and in stereotypical gender roles. These measures were successful because attitudes towards women have changed over time, as seen in the significant increase in the number of women on company boards, in senior management positions, and in political power, where key decisions are made. Many of these changes were achieved voluntarily, without the need for compulsion. The Nigerian government should adopt mechanisms to target gender stereotypes through education and educational programmes and a lot of these should be targeted at schools at an early age where children's attitudes and conceptions are formed. A comprehensive curriculum should be designed to remove gender stereotypes from education, and educational materials should be developed to target children early and their parents encouraged to raise them in a non-gender biased way.

The Nigerian government can also utilize laws as an instrument to change attitudes and conceptions about gender by passing on messages that certain practices will not be tolerated and support women to achieve equality and have equal opportunities at home and in society. As a first step, the government should make the National Gender Policy legally binding by proposing it as a bill to the National Assembly and signing it into law specifying penalties for non-compliance. The government also needs to review its discriminatory laws against women and abolish such laws replacing them with laws promoting women's rights. Laws supporting equal rights and protecting women from sex discrimination are necessary when trying to prevent sex discrimination because where laws are non-existent, it could be viewed as the government condoning such practices. In addition to laws, the government should ensure that barriers to accessing justice are removed by ensuring all agents to justice are adequately educated and trained to understand the ills caused to society by gender stereotypes as well as understand the goals which the government seeks to achieve. Victims should also be encouraged to report such acts and with appropriate laws in place, they will be empowered to bring perpetrators to justice, deterring future discrimination and violence against women.

Conclusion

This study has demonstrated that the current legal provisions in Nigeria are inadequate to protect women from sex discrimination and do not ensure equal treatment between men and women. Addressing gender discriminatory practices requires a comprehensive legislation and enforcement mechanism and without adequate laws prohibiting these

social problems, it will leave victims unprotected which may imply that the government is unconcerned about safeguarding its female citizens.

Lessons can be learned from the UK, where equality legislation together with non-policy measures formed the basis for advancing gender equality. The UK government's clear laws prohibited discrimination, promoted equality and improved the lives of working parents by supporting a healthy work-life balance. This led to a marked increase in women's participation in the labour market. The UK's equality law provided women the legal tools to seek redress when they have experienced discrimination by comparing their treatment to that of a man and pursue justice when standards have not been met.

Ultimately, for Nigeria to protect women and promote gender equality, a comprehensive, unified law is essential, along with a commitment to changing societal attitudes. By implementing these measures, Nigeria can ensure that women have equal opportunities, protection under the law, and the ability to thrive in all areas of society.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

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