

## **The Protection of Women against Workplace Discrimination: Investigating the Limit of the Law in Nigeria**

*Brown Etareri Umukoro*<sup>1</sup>  
*Ogheneochukome Orumana*<sup>2</sup>

### **Abstract**

*Workplace discrimination is not only a form of segregation; it is an affront on the female gender. Women in employment suffer from discriminatory practices in the area of training, job opportunities, remuneration, promotion, etc. Unfortunately, not much scholarship exists on the degree of protection which the law affords a Nigerian woman against workplace discrimination on the basis of her gender. Although, gender gaps in employment exist everywhere, the disparity in Nigeria is still a serious and a growing cause for concern. The article seeks to investigate the extent to which Nigerian laws specifically protect the female gender in the workplace. The article contends that although the amendment of the Nigerian Constitution in 2010 gives power to the National Industrial Court to adjudicate cases bothering on sexual harassment, the amendments merely provide for procedural safeguard and do not make freedom from sexual harassment strictly a fundamental right. The article finds that there is no gender specific law in Nigeria which guarantees women's right against workplace discrimination and advocates for the development of a gender-specific legal regime for the protection of women against discrimination in Nigeria.*

**Keywords:** Workplace discrimination, sexual harassment, maternity protection, equal remuneration, rights of women, gender disparity

### **I Introduction**

Nigeria is a federal state with a growing population of over 200 million people. The National Population Commission (NPC) estimates that the population of Nigeria will rise to 264,068,000 people in 2030.<sup>3</sup> Out of this number, women

---

<sup>1</sup> Faculty of Law, Delta State University, Nigeria.

<sup>2</sup> Faculty of Law, Delta State Judiciary, Nigeria.

<sup>3</sup> National Policy on Population for Sustainable Development (National Population Commission, November, 2021), 2.

[https://drive.google.com/file/d/1\\_LqDbc249sq\\_bo\\_Cmpa8VSZBmk8fHJSj/view](https://drive.google.com/file/d/1_LqDbc249sq_bo_Cmpa8VSZBmk8fHJSj/view)

constitute about half of the populace. Nigeria, in the Global Gender Gap Report 2024 scored 0.650 on gender parity on a scale of 0-1, taking the 125<sup>th</sup> position out of 146 countries. This is an improvement in the position of Nigeria in 2023 which was 130<sup>th</sup> position out of 146 countries. Some of the subindexes for the assessment in the Global Gender Gap Report (GGGR) are economic participation and opportunity as well as political empowerment. The statistics demonstrate slow progress towards gender parity in Nigeria. It shows that not many women are in leadership positions. Few women in professional and technical career aspire to occupy leadership role because of the slim prospect for women in Nigeria. For instance, only 4.2 per cent of Senior Advocates of Nigeria are women.<sup>4</sup> This is the pattern across most professions in Nigeria. The 2023 GGGR listed Nigeria as one of the countries with the least representation of women in parliament while 2024 Report shows that significant gender gaps persist in professional and technical work, with parity at only 62.6% while estimated earned income stands at 50.1%. These reports did not come as a surprise. In fact, the National Assembly in one swoop, at its plenary session held in March 2022, effortlessly rejected five bills which sought to improve women participation in governance in Nigeria. These are: Bill to provide Special Seats for Women at the National Assembly, Bill for Affirmative Action for Women in Political Party Administration, Bill to grant Citizenship to Foreign-born Husbands of a Nigerian Woman, Bill for the Allocation of 35 per cent of Political Positions based on Appointment of Women and Bill for the Inclusion of at least ten percent Affirmative Action in favour of Women into Ministerial Appointments.<sup>5</sup>

Patriarchy penetrates every segment of life in the Nigerian society and this is affecting meaningful efforts aimed at closing gender gap in Nigeria. Male

---

<sup>4</sup> Victoria O Awomolo, The 21<sup>st</sup> Century Female Legal Practitioner: Prospects and Challenges, being a text of paper presented at FIDA Kogi Law Week 11<sup>th</sup> November, 2021. <https://fida.org.ng/wp-content/uploads/2021/11/The-21st-Century-Female-Legal-Practitioner-Prospects-and-Challenges-1.pdf>; '50:50 by 2030: A Longitudinal Study into Gender Disparity in Law', IBA (2023), <https://www.ibanet.org/document?id=IBA-50-50-by-2030-A-longitudinal-study-into-gender-disparity-in-law-Nigeria>.

<sup>5</sup> 'Policy and Legal Advocacy Centre, 2022. NASS rejection of women bills blights constitution review', <https://placng.org/Legist/nass-rejection-of-women-bills-blights-constitution-review/>; 'The Nation, 2020: What you need to know about five gender-related bills rejected by lawmakers', <https://thenationonlineng.net/what-you-need-to-know-about-five-gender-related-bills-rejected-by-lawmakers/>

domination in politics, families, religious houses and communities provides a foundation for the inequality of opportunities and the treatment of women in their employment and workplaces in Nigeria.<sup>6</sup> The life of an average Nigerian woman is characterised by unequal treatments and differentiations from birth while the male counterparts is the lord of all.<sup>7</sup> This is reinforced through agents of socialisation such as the family,<sup>8</sup> churches, mosques and even schools<sup>9</sup> due to the culture of patriarchy in Nigeria and most societies in Africa. The patriarchal society sets boundaries for women putting them in a structurally unequal position in families, communities, market places and in the places of worship<sup>10</sup>. Unfortunately, this culture does not only relegate women to a subordinate position in the society, it has also formed the basis for distinction, exclusion or preferences in employment against the female gender.<sup>11</sup> Nigerian Women face diverse forms of disparity in their places of work. These include wage disparity, prejudices against women, hinderances to promotion, limited managerial opportunities, lower pay, lack of recognition for contributions, lack of proper motivation and respect for female bosses in workplaces, and so on. These barriers do not only leave women with untapped potentials in Nigeria, they also pose limitations to women's economic involvement and empowerment generally. The

---

<sup>6</sup> Adetutu Deborah Aina-Pelemo, M. C. Mehanathan, and P. Kulshrestha, Sexual Harassment at Workplace: Judicial Impact in Nigeria and India, *INDIAN JOURNAL OF LAW AND HUMAN BEHAVIOR*, 4.2 (2018), 108-221; L. Iroegbu-Emeruem, and others, 'Gender Perspective in the Workplace: The Experience of Women Medical Doctors', *Niger Med J*, 64.5 (2023), 653-660.

<sup>7</sup> Onyeka C. Okongwu, Are Laws the Appropriate Solution: The Need to Adopt Non-policy Measures in Aid of the Implementation of Sex Discrimination Laws in Nigeria, 21 *International Journal of Discrimination and the Law*, 26-46 (2021). <https://doi.org/10.1177/1358229120978915>

<sup>8</sup> M. Krieger, Agents of Socialization and Female Migrants' Employment: The Influence of Mothers and the Country Context, 36 *European Sociological Review* 902-919 (2020). <https://doi.org/10.1093/esr/jcaa029>

<sup>9</sup> *Ibid*

<sup>10</sup> Godiya Allanana Makama, Patriarchy and Gender Inequality in Nigeria: The Way Forward,

*European Scientific Journal*, 115-144 (2013). <https://core.ac.uk/download/pdf/236407158.pdf>

<sup>11</sup> Enobong Mbang Akpambang, A Critical Appraisal of the Legal and Policy Frameworks for the Protection of Women's Rights in Nigeria, 10 *American International Journal of Contemporary Research*, 17-31 (2020). <https://doi.10.30845/ajcr.v10n1p3>

culture of inequality against women in workplaces also appears as finding tacit support within the Nigerian legal system.<sup>12</sup> Thus, the article seeks to critically analyse certain legal instruments and practices in Nigeria to the extent that they relate to employment and the fundamental right against discrimination in order to ascertain the degree to which women's right against discrimination is protected by law in the workplace. These laws include domestic legislation like the Constitution of the Federal Republic of Nigeria 1999 (as amended),<sup>13</sup> Labour Act 2004. The article also reviews relevant regional and international legal instruments to which Nigeria is a signatory.

## **II Nigerian Laws Protecting Women in the Workplaces**

Nigeria has a robust legal framework relating to labour, industrial causes and freedom from discrimination but whether these laws sufficiently protect the female gender in the workplace is the core issue of this study. This section is intended to investigate how some of the laws in Nigeria rather encourage discrimination against women in the workplace and how certain legislation which ordinarily are specifically formulated to protect a class of persons do not have gender perspective and do not articulate gender differences in their provisions. The section also inquires into the role of penal laws in the protection of the fundamental freedoms of women from discrimination in the workplace in Nigeria. For this purpose, the section examines statutes like the Constitution of the Federal Republic of Nigeria 1999 (as amended), Labour Act 2004, etc. the Police Act 2020, the HIV and AIDS (Anti-Discrimination) Act 2014, Discrimination against Persons with Disability (Protection) Act 2018 and Violence Against Persons (Protection) Act 2015.

### **A. The Constitution**

The Constitution is the highest law of the land. It defines a number of rights in Chapter IV which it regards as fundamental rights. The import of this is that they are enforceable rights. The right against discrimination falls within these rights. Section 42 of the Constitution provides for the rights of all citizens to freedom

---

<sup>12</sup> Chineze Sophia Ibekwe, Equal Pay and Comparable worth: Conceptual and Functional Bearings to Closing Nigeria's Gender Pay Gap, 100 *Journal of Law, Policy and Globalization*, 30-39, (2020).  
<https://www.iiste.org/Journals/index.php/JLPG/article/view/53916/55710>

<sup>13</sup> Hereafter 'the Constitution.'

from discrimination and equality irrespective of gender. Subsection (1) (a) of this section prohibits the discrimination of any person on the basis of ethnic group, place of origin, sex, etc. This section of the Constitution protects the rights of women against discrimination on the ground of sex. Non-discrimination on the basis of sex as stated in this section complies with international conventions especially the Convention on the Elimination of All Forms of Discrimination against Women. The provision in this section reiterates the fact that women are not to be treated as inferior to their male counterparts. However, this is not the case in reality as discrimination on the ground of sex still persists in workplaces. Some employers as a matter of policy do not engage married women or pregnant women nor do they support marriage of female workers immediately after engagement. In the work setting, there are employers who prohibit female workers from getting pregnant over a period of time while other promote policies which bring the employment to an end if found pregnant outside wedlock. These discriminatory practices against women have been held as violations of the principle of non-discrimination and equality enshrined in section 42 of the Nigerian Constitution.<sup>14</sup>

The provision of section 42 of the Constitution is a general reference to non-discrimination on the basis of sex and other listed status. The section does not specifically provide for the rights of women against discrimination. The rights in Sections 33-44 of the Constitution are general fundamental rights enjoyed by all persons including men. The 1999 Constitution contains no provision which seeks to address gender differences that exist along gender lines in Nigeria, and such, there is no specific protection of Nigerian women against discrimination.<sup>15</sup> A specific provision guaranteeing women's rights against discrimination in the Constitution would prioritise the peculiarities of the female gender and

---

<sup>14</sup> *Omolola Olajide v The Nigeria Police Force & 2 Ors.* (Unreported suit N. NICN/AK/14/2021) delivered 11<sup>th</sup> Jan. 2023.

<sup>15</sup> Ougua V. C. Ikpeze, *Legislating Women's Affirmative Action and its Constitutionality in Nigeria*, 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 161-174. (2011). <https://www.ajol.info/index.php/naujilj/article/view/82399/72553>; Halimat Tope Akaje and Adelowo Stephen Asonibare, *The Affirmative Action and Women Participation in Politics in Nigeria: An Assessment Study on the Legal Constraint*, 1 *Kwasu Journal of Humanities*, 71-86 (2018) <https://journals.kwasu.edu.ng/index.php/humanities/article/download/44/42/82>

accommodate their special needs as vulnerable group. These peculiarities require extra constitutional protection as a result of the age long cultural, social and religious practices of male dominance and women subjugation in African societies. Gender specific language in the Nigerian Constitution could encourage the possibility of further advancing women's rights and establishing a more effective legal framework for women's right regime. Given that Nigeria has not enacted or adopted any gender specific instrument (such as the CEDAW), a specific women's right to non-discrimination would have tremendously filled in the gap in a country with a national assembly dominated by male lawmakers.

For instance, apart from providing for equality in Section 20 which guarantees general human rights, the Malawian Constitution in Section 24 specifically guarantees the right of women from discrimination on the basis of their gender or marital status. Section 24 (2) specifically prohibits any law that discriminates against women on the basis of their gender or marital status, and states that legislation shall be passed to eliminate customs and practices such as sexual abuse, harassment and violence; discrimination in work, business and public affairs, deprivation of property, including property obtained by inheritance.<sup>16</sup> The gender specific provisions of the Malawian Constitution have given the Malawian Courts more impetus to protect the rights of women.<sup>17</sup> In the Malawian case of *Namatika v Namatika*,<sup>18</sup> the Claimant as a widow applied to the Court for the appointment of estate administrators for the administration of her late husband's property for her benefit and that of her children. The defendant who was the brother of the deceased contended that he was a more appropriate person to be appointed as administrator. The Court with ease reproduced the gender

---

<sup>16</sup> Some have advocated for the integration of statutory regulations with customary law to enhance equitable protection for women against sexual abuse. See Ni Putu Rai Yuliantini1, Dewa Gede Sudika Mangku and Lukas Norman Kbarek, Customary Law and Justice: Protecting the Rights of Women Victims of Sexual Violence in Bali, 15 *Jurnal Hukum Novelty*, 180-199 (2024). <https://journal.uad.ac.id/index.php/Novelty/article/view/28542/12717>

<sup>17</sup> Andrew K. C. Nyirenda, *The Role of the Judiciary in Protecting the Rights of Vulnerable Groups in Malawi, Using the Courts to Protect Vulnerable People: Perspectives from the Judiciary and Legal Profession in Botswana, Malawi, and Zambia*, South African Litigation Centre, Johannesburg 1-10 (2014). <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Using-the-courts-WEB.pdf>

<sup>18</sup> *Namatika v Namatika* [1999] M.L.R. 287

specific provisions of the Malawian Constitution including Section 24 (1) (b) which states that “[w]omen have the right and capacity to acquire and retain custody, guardianship and care of children and to have an equal right in making decisions that affect their upbringing.” This kind of protection is also present in the Nigerian Constitution except that it is not justiciable.

The Nigerian Constitution by way of directive principles of state policy in Chapter II, states in Section 17 (2) (a) that ‘every citizen shall have equality of rights, obligations and opportunities before the law.’ Section 17(3), among other things, provides for equal pay for equal work without discrimination on account of sex or on any other ground. Thus, by the provisions of section 17 (3) (a-e), the Constitution intends that there shall be no discrimination in the payment of wages, salaries, emoluments, compensations, pension and gratuity as well as job opportunity on the basis of sex. However, the provisions contained in Chapter II of the Constitution are not justiciable by reason of Section 6(6) (c) of the same Constitution<sup>19</sup> Any action instituted under Chapter II is unenforceable as they are mere directive principles and the government is not obligated to act on them. They are mere guidelines to the government in the formulation of policies.<sup>20</sup> The provisions which guarantee “equal pay for equal work without discrimination on account of sex,” though gender neutral, are intended to protect the female gender more.<sup>21</sup> Unfortunately, women are equally excluded from pursuing claims under these provisions. This demonstrates lack of genuine commitment by the State towards the protection of women’s right from discrimination in Nigeria. The non-justiciability of this class of women’s rights encourages weak non-discriminatory

---

<sup>19</sup> Brown E. Umukoro, Revisiting the Non-justiciability Issue in Environmental Rights Dialogue in Nigeria, 25 *Environmental Law Review*, 101-119 (2023). <https://doi.10.1177/14614529231168491>; D. Agwor, The Non-justiciability of the Fundamental Objectives and Directive Principles of State Policy under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) vis-à-vis, its Justiciability in the Spirit of the law, 10 *International Journal of Innovative Legal & Political Studies*, 117-125 (2022). <https://seahipaj.org/journals-ci/mar-2022/IJILPS/full/IJILPS-M-11-2022.pdf>; *Ukaegbu v Attorney-General of Imo State* (1984) 1 SCNLR 212

<sup>20</sup> Brown E. Umukoro and Moses O. Omozue, Environmental Protection and the Role of National Policies and Guidelines in Nigeria, 4 *Journal of Environmental Law and Policy*, 211-234 (2024). <https://doi.org/10.33002/jelp040208>

<sup>21</sup> Adedeji Bethel Oluwatosinl Ajayi Oluwatobiloba Ifedolapo, Women, Their Rights, and Workplace Discrimination, 67 *International Affairs and Global Strategy*, 22-34 (2018). <https://www.iiste.org/Journals/index.php/IAGS/article/view/45010/46451>

norms and behaviours in workplaces. The non-enforceability of the right of women to equal pay is in furtherance of the social and cultural limitations which women suffer in their everyday life in Nigeria. The practice also accounts for why equality Bills always suffer rejection by the lawmakers. As long as this critical aspect of women's rights are buried under the non-enforceability chapter of the Constitution, women's worth and their ability to rise in places of work will always be undermined.

The Nigerian Constitution did not initially make direct reference to workplace discrimination. However, a later amendment provides a procedural safeguard with respect to claims relating to sexual harassment in the workplace. This was through the Constitution of the Federal Republic of Nigeria.<sup>22</sup> This later alteration also provides a window for the application of treaties and international best practices on labour issues.<sup>23</sup> Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 vests the NICN with exclusive jurisdiction on labour matters and gives the Court power to apply international labour laws in the determination of industrial cases in Nigeria. Some refer to this as direct or automatic incorporation of international labour laws.<sup>24</sup> Ordinarily, courts in Nigeria are by Section 12 of the Constitution precluded from the application of treaties and other international instruments except they have been domesticated in Nigeria.<sup>25</sup> To the extent that the amendment of the Constitution in 2010 allows the NICN to apply international labour laws, it has been argued correctly that the Nigerian Constitution provides against workplace

---

<sup>22</sup> Adeyinka Adejugbe and Adedolapo Adejugbe, Women and Discrimination in the Workplace: A Nigerian Perspective, *SSRN*, 1-31 (2018). <http://dx.doi.org/10.2139/ssrn.3244971>

<sup>23</sup> A. Adejugbe and A Adejugbe, Constitutionalisation of Labour Law: A Nigerian Perspective, *SSRN*, 1-20 (2019). <http://dx.doi.org/10.2139/ssrn.3311225>

<sup>24</sup> Peter Obi Okonkwo, Application of Treaties in Nigeria vis-à-vis the Instruments of the international Labour Organisation, 9 *NAUJILJ*, 149-157 (2018); C. E. Okeke and M. I. Anushiem, Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward, 9 *NAUJILJ*, 228 (2018).

<sup>25</sup> O. O. Oluwadunsin, National Industrial Court: Court with a Difference and the Need to Review its Legal Status, 9 *NAUJILJ* 59-70 (2018); Aderonke Adegbite and Solomon Agbato, Re-positioned Status of the National Industrial Court under the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010, *SSRN*, (2023), <http://dx.doi.org/10.2139/ssrn.4345304>

discrimination.<sup>26</sup> Besides the automatic or direct application of international labour laws, Section 254C (1) (g) of the Third Alteration Act 2010 directly vests the NICN with the exclusive jurisdiction to hear and determine any dispute arising from discrimination or sexual harassment at workplace. The National Industrial Court (Civil Procedure) Rules 2017 elaborately defines what sexual harassment entails for the purpose of guiding the NICN in the application and interpretation of Section 254C. Order 10 (2) of the Rules defines *sexual harassment* to include “unwanted, unpleasant, offensive or threatening conduct of a sexual nature distinguished from sexual attention that is welcome and mutual.” Some labour law scholars have described it as including such practices like demanding for sex from female workers, the provision of work benefits in exchange for sex, creation of hostile environment by the use of derogatory or demeaning jokes or other USDB in the workplace.<sup>27</sup> Others regard insubordination of junior male staff to female bosses which is viewed as an extension of the cultural practices of the relegation of women in Nigeria to be another form of discrimination in the work place.<sup>28</sup> The NICN has played a very prominent role in strengthening women’s right at workplaces by consistently striking down all manners of behaviours which tend to undermine the worth of women in their places of work in spite of absence of affirmative or explicit constitutional gender-based provision on the issue. In *Stella Ayam Odey v Ferdinand Daapah & Cuso International*<sup>29</sup> (2017), the NICN agreed that unwelcome behaviours like unsolicited embrace amounted to sexual harassment. The NICN has also vicariously extended liability to employers for failure to investigate allegation of sexual harassment in the workplace and sanctioned offender.<sup>30</sup> This decision is forcing corporate bodies and institutions into drawing

---

<sup>26</sup> Adejugbe and Adejugbe, *Supra* note 22.

<sup>27</sup> Stand to end Rape Initiative, ‘Workplace Sexual Harassment in Nigeria: A Policy Brief’ (2021), <https://standtoendrape.org/wp-content/uploads/2022/06/The-Workplace-Sexual-Harassment-Study-Policy-Brief.pdf>

<sup>28</sup> Linda Iroegbu-Emeruem and others, Gender Perspective in the Workplace: The Experience of Women Medical Doctors, 64 *Niger Med J*, 653-660 (2023). <https://doi.org/10.60787/NMJ-64-5-329>

<sup>29</sup> *Stella Ayam Odey v Ferdinand Daapah & Cuso International* Suit No: NICN/ /CA/ 03/2016

delivered on 13th January, 2017.

<sup>30</sup> *Ejieke Maduka v Microsoft & Ors.*, unreported Suit Number NICN/LA/492/2012, Judgement delivered on December 19, 2013

up policies on sexual harassment to delimit the scope of the offence having regard to the nature of the employment, and to develop preventive measures as well as addressing appropriate cases when they arise.

It is imperative to note that there is no specific or direct local legislature in Nigeria prohibiting sexual harassment in the workplace.<sup>31</sup> Regrettably, the Sexual Harassment Act of 2020 does not relate to workers but students in tertiary institution and their tutors. Thus, claims against sexually coloured behaviours have always been predicated on the general provisions of Section 42 of the Constitution, the provisions of section 254C (1) (g) of the Third Alteration Act 2010 which is procedural in nature and the Rules of the NICN and international labour law. Why these instruments are very important, they do not seem sufficient in addressing the age long and rooted culture of male dominance which have encouraged the male folk into assuming the role of predators leaving the women as prey. A more elaborate, coercive, direct and gender sensitive local enactment deriving its bearing from the constitutional provisions against discrimination will be of great advantage. For instance, though, Section 42 of the Constitution provides for civil remedies against discrimination, sexual violence or harassment as a civil wrong does not neatly fall within the fundamental rights provisions of the Constitution.<sup>32</sup> In relying on the Constitution to demand for civil damages for sexual harassment, a claimant may have to remotely connect the alleged acts of sexual harassment to the dignity of the human person. A more direct and gender-based legislation could bridge this gap. The Constitution was amended to give jurisdiction to the NICN to hear and determine industrial cases connected with disputes arising from discrimination or sexual harassment at workplace. This amendment does not create a substantive right but a procedural safeguard to help the court in the determination of sexual harassment cases. Though the Constitution provides for the hearing of sexual harassment causes, the section does not specify whether there is a right against sexual harassment. Furthermore, although the term *Sexual harassment* was robustly defined in the rules of the NICN, it does not and cannot create a substantive right. This is a

---

<sup>31</sup> A D. Aina-Pelemo, M. C. Mehanathan and P. Kulshrestha, Sexual Harassment at Workplace: Judicial Impact in Nigeria and India, 4 *Indian Journal of Law and Human Behavior*, 108-221 (2018).

<sup>32</sup> Bloomfield, Towards a Better Workplace for Women: Curbing the Menace of Sexual Harassment in Nigeria, (2019).[https://www.bloomfield-law.com/sites/default/files/2021-05/Curbing\\_the\\_menace\\_of\\_sexual\\_harassment\\_0.pdf](https://www.bloomfield-law.com/sites/default/files/2021-05/Curbing_the_menace_of_sexual_harassment_0.pdf)

*lacuna* which is still yearning for attention. The NICN has however lived up to expectation in the application of the direct incorporation of international labour laws in Nigeria. The NICN has said that the “effect of Section 254C(f), (g), (h) and (2) ... is that this Court or an applicant can seek relief/refuge under any treaty or Conventions, Protocols ratified by Nigeria whether or not it is domesticated. I am thus clothed by the above provisions of the Constitution as amended to interpret or apply international Conventions or treaties and best practices as it relates to the subject under consideration.”<sup>33</sup> In *Ejieke Maduka v Microsoft Nigeria Ltd*,<sup>34</sup> the NICN, while interpreting the provisions of CEDAW General Recommendation 19, held that sexual harassment has the effect of cancelling equality of opportunity and treatment at the work place as it is a form of gender-based discrimination. In *Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Anor*,<sup>35</sup> the claimant was subjected to several sexual advances, obscene talks and jokes, sensuous gestures and compliments even during pregnancy by her boss. The claimant refused to succumb and that resulted to her transfer and eventual termination of her employment. In holding in favour of the claimant, the NICN observed as follows:

I do not see the reasons why a man, a boss so to say would visit his PA a female late at night in her hotel room. What would the discussion be about at night? His admission of making jokes with his PA, the claimant that he would marry her is way out of the employment relationship between a boss and a subordinate and to me all the attitude of 2nd defendant coupled with his unwelcome altercations is a clear case of sexual harassment. It is evident that the claimant’s failure to accede to his sexual overtures, resulted in the transfer of the claimant by the 2nd defendant to Kaduna, directing her to report to a junior staff and thus created a hostile environment at work place for her.

### ***B. The Labour Act***

The Labour Act is the principal legislation on labour matters in Nigeria. The Act provides for the protection of the rights of women. However, it does not have any

---

<sup>33</sup> *Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria & Anor* (Unreported Suit No NIC/LA/673/2013 delivered 24 Nov. 2016.

<sup>34</sup> *Iroegbu-Emeruem, Supra* note 28.

<sup>35</sup> *Ibid.*

provision prohibiting any kind of discrimination in the workplace.<sup>36</sup> For instance, Labour Act of Ghana 2003, in section 68, provides that ‘every worker shall receive equal pay for equal work without distinction of any kind.’<sup>37</sup> The Act also introduced the offence of sexual harassment in section 175, where it was defined as ‘any unwelcome, offensive or inopportune sexual advances or request made by an employer or superior officer or a co-worker to a worker, whether the worker is a man or a woman.’<sup>38</sup> The Act itself does not have specific laws to protect women from sexual harassment; however, it requires the employer to take action against harassment at workplace. Under the Sections 63(3)(b) and 64(1) and (2) (a-c) the Labour Act, if a worker terminates the contract of employment with or without notice to the employer, because the employer failed to take action on repeated complaints of sexual harassment of the worker in the workplace, such termination amounts to unfair dismissal which is subject to remedies upon investigation. The Nigerian Labour Act does not contain any provision on sexual harassment in the workplace during employment.

With regards to the protective provisions under the Nigerian Labour Act, section 54 provides for maternity protection of working women. Under section 54(10) of the Act the right to maternity leave applies to all women in any public or private industrial or commercial undertaking and includes an agricultural undertaking. Section 54(1) entitles the woman to twelve weeks maternity leave which includes a compulsory six weeks post confinement period upon the production of a medical certificate given by a registered medical practitioner. The Act also provides at Section 54(1)(c) that a woman is entitled to be paid not less than fifty per cent (50%) of her wages if she had been in the employment of her employer for a period of six months, immediately prior to her absence while under Section

---

<sup>36</sup> Mandu Ndem, Gender Discrimination in Nigerian Labour Practices: Legal Challenges and Policy Imperatives, 12 *Nnamdi Azikiwe University Journal of Commercial and Property Law*, 182-191(2025).  
<https://journals.unizik.edu.ng/jcpl/article/view/6213/5177>

<sup>37</sup> Theophilus Edwin Coleman and Letlhokwa George Mpedi, Towards the Practical Realisation of the Concept of Equal Pay for Equal Work in Ghana: Some Comparative Lessons from South Africa and the United Kingdom, 44 *Industrial Law Journal*, 28 – 50 (2023). <https://doi.org/10.47348/ILJ/v44/i1a2>

<sup>38</sup> Brown Etareri Umukoro and Peter A. Oboreh, Is the National Industrial Court (NIC) Still a Special Court? A Review of the Extra Luggage of Ancillary Jurisdiction of the NIC as a Disservice to Labour Justice, 13 *Beijing Law Review*, 948-966 (2023). <https://doi.org/10.4236/blr.2022.134061>

54 (i) (d) nursing mothers are allowed half an hour twice a day to nurse their babies during working hours and the use of such time off to underrate the overall performance of a female worker is sexual discrimination.<sup>39</sup>

Very remarkably, section 54(4) of the Act protects the working woman by prohibiting an employer from dismissing a female worker for her absence from work while on maternity leave or any other period of illness due to her pregnancy or confinement so long as she produces a medical certificate by a registered medical practitioner in respect of same. The right to maternity leave belongs to every pregnant woman either married or unmarried, working in any public or private industrial or agricultural undertaking. Maternity leave commences 6 weeks before the expected day of delivery and 6 weeks after delivery irrespective of the temporary or confirmed nature of her job. In the case of *Mrs Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative*,<sup>40</sup> the applicant, a woman, had her employment terminated for being pregnant. The Court applied Section 42 of the Nigeria's Constitution, the African Charter on Human and Peoples' Rights and the ILO Convention No. 111 on Discrimination. The Court held the termination to be wrongful and unconstitutional and awarded compensation to the tune of Five Million, Five Hundred and Seventy-Six Thousand, and Six Hundred and Seventy Naira (N5, 576,670.00) being one year's full gross pay. Similarly, in *Okunbowa v Group Consultants Nigeria Project Advisers (Nigeria) Ltd*,<sup>41</sup> the Defendant terminated the Claimant's employment because her employment contract did not provide for maternity leave. The Court held that although her employment contract did not provide for maternity leave, she is entitled to it by virtue of sections 145 and 146 of the Labour Code (now section 54(a) and (4) of the Labour Act). The Court further held that she is entitled to salary for the whole period she was on maternity leave and entitled to damages for wrongful termination of her employment. In *Standard Chartered Bank v. Adegbite*,<sup>42</sup> the Court of Appeal affirmed the decision of the lower court which held the appellant bank liable for discrimination when the appellant poorly appraised the performance of the respondent during her

---

<sup>39</sup> *Standard Chartered Bank v. Adegbite* (2019) 1 NWLR (Pt. 1653) 348.

<sup>40</sup> *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative, Nigeria* & 2 Ors (2012) 27 NLLR (Pt. 76) 110.

<sup>41</sup> *Okunbowa v Group Consultants Nigeria Project Advisers (Nigeria) Ltd* (1974) CCHCJ/2/74.

<sup>42</sup> *Coleman and Mpedi, Supra* note 37.

maternity leave which was extended for the sake of her sick new born baby thereby forcing her to resign. The NICN has performed creditably well in upholding the tenet of the law on discrimination even in the face of gender-neutral provisions of Section 42 in the Constitution. However, there exist some procedural gaps in the jurisdiction of the NICN over the protection of women against workplace discrimination. For instance, it is doubtful if the NICN can validly enforce the right to discrimination which is a fundamental right since the NICN is not one of those Courts mentioned in Section 46 of the Constitution which vests jurisdiction on the High Courts. It is not likely too that the NICN can apply the Fundamental Rights (Enforcement Procedure) Rules 2009 because Order 1 of the said Rules defines “Court” as the High of the State, the Federal High Court or the High Court of the Federal Capital territory. These lapses have been regarded as confusing<sup>43</sup> and a cause of delay in human rights justice.<sup>44</sup> Besides, the NICN is yet to cite a judicial division in every State in Nigeria. In the States where the Courts exist, they are sited mostly at the headquarters thereby creating issues of lack of proper access to court for working women who are already constrained by childcare obligations and matrimonial responsibilities. This is worse for most women working in the private sector where there is no job security, adequate remuneration or meaningful policy against sexual harassment.

The protective provision on women in the Labour Act also includes prohibition of women from night work and underground work. This is contained in sections 55 and 56 of the Labour Act. There are however exceptions to the provisions of these sections. Although, the provisions in sections 55 and 56 of the Labour Act respectively have the colouration of protection of the woman in the workplace, they are in fact discriminatory in the sense that they limit women’s access to equal employment opportunities which are enjoyed by the male folk and prevent them from making a choice of the type of work they prefer.<sup>45</sup> These provisions are adverse to the international Equal Remuneration Convention (No.100) of

---

<sup>43</sup> Umukoro and Oboreh, *Supra* note 38.

<sup>44</sup> Abdullahi Saliu Ishola, Adekumbi Adeleye and Dauda Momodu, Rethinking the Jurisdiction of the National Industrial Court in Human Rights Enforcement in Nigeria: Lessons from South Africa, 3 *The Transnational Human Rights Review*, 1-22 (2016). <https://doi.org/10.60082/2563-4631.1021>

<sup>45</sup> O. Adesina-Babalogbon, Nigerian Women Workplace Rights: The Present Legal Reality’ 1st *National Conference of WITED*, Ilaro Chapter, Federal Polytechnic, Ilaro, (2019), 501-506. <http://eprints.federalpolyilaro.edu.ng/1403/1/Legal%20rights.pdf>

1951 which calls for equal job opportunities for men and women. A violation of the aforementioned provisions by an employer is an offence under Section 58 of the Labour Act. The sanctions for the breach of the maternity right of working women provided under the law is grossly inadequate, making the provision ineffective taking into consideration the present realities in the Nigerian economy.<sup>46</sup>

It is pertinent to note that the maternity leave provisions under the Labour Act falls below the international standard for maternity protection of women. The Maternity Protection Convention, 2000 (No.183) stipulates 14 weeks maternity leave while the Maternity Protection Recommendation, 2000 advocates for the extension of maternity leave to 18 weeks. The Labour Act only provides for a 12 weeks maternity leave which falls below the international standard. However, despite this provision in the Labour Act, some employers have allowed women longer maternity leave showing the importance of maternity protection for women. For instance, the Nigerian government increased maternity leave for female employees to 16 weeks.<sup>47</sup> While the Labour Act in its maternity protection provisions under section 54 restricts it to 12 weeks. It also affords a nursing mother a break of an hour during the working hours of a nursing mother. The present Convention No.183 has gone beyond these provisions to include other components in its maternity provision. The components include the scope of women covered, health protection, maternity leave, and leave in case of illness or complications before or after the maternity leave period, benefits/payment during the leave, employment protection and non-discrimination, breastfeeding and child care facilities. Unfortunately, the Maternity Protection Convention 2000 (No. 183) is yet to be ratified by the Nigerian government.

### **C. The Police Act**

---

<sup>46</sup> Emuobo Emudainohwo, The Inadequacy of Legal Provisions on Workplace Sexual Harassment in Nigeria and Ghana: The Way Forward, 10 *PADJADJARAN Jurnal Ilmu hukum*. 300 – 452 (2023). <https://doi.org/10.22304/pjih.v10n3.a4>

<sup>47</sup> E. Onyeji, Nigerian Government Increases Maternity Leave to Four Months, 6 June 2018. [https://www.premiumtimesng.com/promoted/651699-nigeria-governors-spouses-forum-advocates-six-month-maternity-leave.html#:~:text=Forum%20\(NGF\).-,The%20Nigerian%20federal%20government%20in%202018%20increased%20maternity%20leave%20from,in%20the%20country's%20civil%20service.](https://www.premiumtimesng.com/promoted/651699-nigeria-governors-spouses-forum-advocates-six-month-maternity-leave.html#:~:text=Forum%20(NGF).-,The%20Nigerian%20federal%20government%20in%202018%20increased%20maternity%20leave%20from,in%20the%20country's%20civil%20service.)

The Nigeria Police Force is a creation of statute. Until a new Police Act was enacted in 2020, the regnant law had been the Police Ordinance of 1943. The Police Ordinance 1943 was the principal legislation which guided the operation of the Nigeria Police for several decades. In addition to this Ordinance is the Police Regulation of 1968. These Regulations are key components of the Police formation as subsequent edition of the principal Act incorporated the Regulations. The principal enactment was incorporated into the 1999 edition of the Laws of the Federation (LFN), and subsequently, 2004 edition of the LFN without significant changes. The Regulations on their part have not been reviewed since they were made in 1968. Thus, the Nigeria Police Force is one of the oldest institutions in the country without serious reforms until 2020. Although, the Police Act 2020 brought in a number of innovations, the Act makes no reference to the Regulations. The Police Act 2020 nether abolishes the Regulations nor incorporates them. The Regulations therefore remain extant laws.

There are apparent gender gap concerns in the operations of the Nigeria Police. The greatest gender disparity in the workplace in Nigeria is in the mode of employment, training and general condition of service in the Nigeria Police Force. Female police officers receive serious differential treatments at different levels to their disadvantage. They are rarely allowed to head police operations and top offices.<sup>48</sup> First is the ratio of men to women in the Force. For instance, in a study released in 2020, the total number of officers in the Nigeria Police Force as at 2018 was 203,024 while women police officers were just 19,785 representing 9.75 per cent.<sup>49</sup> Second, all police officers are referred to as ‘he’ ‘him’ and ‘himself’ in various police legislations including the Police Act, 2020. This has been described as “a deliberate attempt either to ignore or at best underplay the presence of women in the Nigeria Police Force”<sup>50</sup> No doubt, there is gross gender disparity in the Police Force. This gender insensitivity has been

---

<sup>48</sup> A Gender Policy for the Nigeria Police Force, 2010.

[https://www.endvawnow.org/uploads/browser/files/security\\_nigeria\\_gender\\_policy\\_police\\_unwomen\\_2010.pdf](https://www.endvawnow.org/uploads/browser/files/security_nigeria_gender_policy_police_unwomen_2010.pdf)

<sup>49</sup> Statistical Report on Women and Men in Nigeria, 2020.

<https://nigerianstat.gov.ng/elibrary/read/1241062>

<sup>50</sup> A Gender Policy for the Nigeria Police Force, 2010.

[https://www.endvawnow.org/uploads/browser/files/security\\_nigeria\\_gender\\_policy\\_police\\_unwomen\\_2010.pdf](https://www.endvawnow.org/uploads/browser/files/security_nigeria_gender_policy_police_unwomen_2010.pdf)

attributed to the fact that the instruments directing the operations and activities of the Nigeria Police Force were founded on “British Victorian ideology” and laws which were too old for modern policing.<sup>51</sup> The history of the Nigerian legal system is intertwined with British colonisation. The integration of colonial laws into the Nigerian legal system did not only preserve certain archaic laws (some of which have been reviewed in England) but also sustained certain unprogressive legal behaviours which have become difficult to erase even after the laws have been changed. For instance, the Nigeria Police Regulation of 1968 by Regulation 124, provides that a woman police officer who wanted to marry must first of all apply in writing to the commissioner of police under whom she served for permission. Apart from applying, she must also give the name, address, and occupation of the suitor possibly for approval after positive investigation. Thus, permission was only granted if the suitor was of good character. Besides, the woman police officer must have served in the Force for a period of not less than three years. Regulation 123, on the other hand, excluded women police officers from being drilled under arm. Again, women police were not to be offered any special privilege on account of marriage. Rather, under Regulation 125 of the Nigeria Police Regulation 1968, she could be subjected to posting and transfer as if she were unmarried. Under Regulation 127 where a police woman became pregnant without marriage, she was liable to be dismissed summarily and would not be relisted except with the approval of the Inspector General of Police. The Regulations did not also make provision for maternity leave for pregnant police women as a matter of course. Under Regulation 126 the granting of leave was at the discretion of her boss. It is worthy of note that several of these Regulations, particularly Regulations 124 and 127 have been struck down by the Court declaring them as an infringement of the provisions of section 42 of the Constitution and therefore unconstitutional.<sup>52</sup> These decisions are yet to influence the Police in their behaviour towards gender discrimination.

Unfortunately, the recent reforms in the Police Force which culminated in the enactment of the Police Act 2020 did not address these concerns. Though, section 135 of the Police Act 2020 forbids the Police Force or any person from discriminating against any person on the basis of sex, the said provisions are too

---

<sup>51</sup> *Ibid.*

<sup>52</sup> *Women Empowerment and Legal Aid (WELA) v. Attorney-General of the Federation* (Unreported) Suit No: FHC/IKJ/CS/M128/20 10.

vague to produce any meaningful result. First, the Police Act 2020 does not specifically repeal the gender offensive provisions in the former Police Act. These Regulations which have been in practice since 1968 have become part and parcel of Police behaviour and a very drastic and unambiguous provision is required to uproot these age-long offensive practices. In spite of section 135 of the Police Act 2020, the Police Service Commission in a recent recruitment advert of the Nigeria Police released on 13<sup>th</sup> October 2023, categorically and publicly stated that “female applicant must not be pregnant at the time of entry.”<sup>53</sup> This explains the depth of the culture of gender bias in the Police Force. Though, the Regulations are not replicated in the Police Act 2020, this bias may not die off easily. The article suggests that there is need for a more rigorous and regular training and sensitization on the theme of gender parity and non-discrimination in the Police Force. Other meaningful initiatives include a comprehensive review of the Police Regulations to ensure compliance with the Constitution and relevant decisions of the Courts.

### **III. Criminal Law and Workplace Discrimination in Nigeria**

#### ***A. The Criminal Code Act/Penal Code***

The Criminal Code Act (CCA) and the Penal Code (PC) are the two principal penal legislations in Nigeria, though there is also the Sharia Penal Code which is a religious code for Muslims. Emphasis in this subsection shall be on the CCA and the PC which are secular legislation passed by the Nigerian government. These two statutes do not have specific provisions for the protection of women on the basis of their gender. Until recently, discrimination in Nigeria was purely a constitutional issue of human rights than a crime. Though, a measure of human rights’ breaches (e.g. threat to life and torture) also amounts to criminal offence, discrimination is yet to widely assume this space in the Nigerian criminal justice system. The CCA and PC were introduced in 1916 and 1960 respectively at a time when the Nigerian legal system was still highly influenced by African traditions and culture which regarded the woman as a chattel of her husband and voiceless member of the family.<sup>54</sup> Though these two legislations were drafted

---

<sup>53</sup> Apply (2023) Police Begin the recruitment of Constables, Specialists. The Cable. <https://www.thecable.ng/apply-police-begins-recruitment-for-constables-specialists#:~:text=%E2%80%9CAplicants%20must%20be%20aged%20between,female%2C%E2%80%9D%20the%20statement%20reads.>

<sup>54</sup> Brown Umukoro, Case for the Recognition of the Right of Spouses under Customary

from other jurisdictions, the rights of women were not clearly articulated in them because during this era, the world over was still contending with how much rights should a woman have. The British colonial system had control over Nigeria until 1960 when the country gained her independence. The colonial administration could not influence the Nigerian legal culture towards an enhanced women's right regime because of its administrative policy of assimilation by which customary laws were applied side by side with English laws. Till date, certain discriminatory customary practices against women still exist.<sup>55</sup>

The CCA and PC criminalise certain sexual behaviours which are usually offences against women. Prominent among these are the offences of rape, indecent assault and defilement. Rape cases are very prevalent in Nigeria. The country has been described as having *rape culture*,<sup>56</sup> although gender-based violence is a major social vice everywhere in the world. The traditional definition of the offence of rape under the CCA makes its prosecution very difficult in Nigeria.<sup>57</sup> Section 357 of the CCA provides for rape. In prosecuting rape, the

---

Law to Maintenance, 8 *Commonwealth Law Review Journal*, 666-685 (2022). <https://clrj.thelawbrigade.com/article/a-case-for-the-recognition-of-the-right-of-spouses-under-customary-law-to-maintenance/>

<sup>55</sup> S. C. Ifemeje and N. Umejiaku, Discriminatory Cultural Practices and Women's Rights among the Igbos of South-East Nigeria: A Critique, 25 *Journal of Law, Policy and Globalization*, 18-27 (2014). <https://core.ac.uk/download/pdf/234649863.pdf>

; Timilehin Olayinka Omoniyi, Appraisal of Harmful Traditional Practices in Nigeria: Magnitude, Justifications and Interventions, 1 *Journal of Social, Humanity, and Education*, 67-78 (2020). <https://doi.org/10.35912/jshe.v1i1.335>; Ekwutosi Essien

Offiong, Eyo Itam Eyo and Asibong Essien Offiong, 'Patriarchy, culture and the social development of women in Nigeria, 1 *PINISI Journal of Art, Humanity and Social Studies*, 79-86 (2021),. <https://ojs.unm.ac.id/PJAHSS/article/download/26708/13541>; Mary

Imelda Obianuju Nwogu and Alma Nneka Okonkwo, Cultural and Legislative Constraints Militating against Women's Rights in Nigeria: The Way Forward for a More Inclusive Protection, 14 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 42-53 (2023). <https://www.ajol.info/index.php/naujilj/article/view/246996/233626>

<sup>56</sup>Richard Abayomi Aborisade, Image-Based Sexual abuse in a Culturally Conservative Nigerian Society: Female Victims' Narratives of Psychosocial Costs, 19 *Sexuality Research and Social Policy*, 220-232 (2022). <https://doi.org/10.1007/s13178-021-00536-3>

<sup>57</sup> Eghosa Osa Ekhaton, Women and the Law in Nigeria: A Reappraisal, 16 *Journal of International Women's Studies*, 285-296 (2015). <http://vc.bridgew.edu/jiws/vol16/iss2/18>

section requires the prosecutor not only to show unlawful canal knowledge but must also establish the absence of consent, or whether consent was obtained by force, intimidation or fear of harm.<sup>58</sup> The CCA does not address the situation where consent is obtained by promise of favour over what the woman ordinarily is entitled nor does it penalise sexual harassment. The complaint of demand for sex before employment, promotion, or before women are given a task (in the movie industry) or before agreeing to produce her songs (in the music industry) is very rife (Iyiola, 2011).<sup>59</sup> Though this class of sexual behaviours are prevalent in workplaces in Nigeria, they do not fall within the provisions of Section 357 of CCA and do not attract criminal punishment under the Codes.

In the northern part of Nigeria, the penal laws are more discriminatory against the female gender. It is worthy of note that section 55(1) of the PC permits a husband to chastise his wife and it is not an offence as long as it does not amount to grievous hurt. Worse still, section 241 of the PC defines grievous hurt in a manner that suggests a serious injury which causes permanent disability or capable of endangering one's life or one which leaves the victim in severe pains for about 20 days. In other words, wiping with cane, slapping, kicking and any manner of domestic violence are allowed on the wife as long as they do not cause grievous hurt, provided they are for the purpose of correcting her. Section 55(2) states that the correction must be reasonable in kind or degree having regards to the age of the victim as well as the physical or mental condition. These provisions have remained the extant law even though they have been severely criticised.<sup>60</sup>

---

<sup>58</sup> G. N. Okeke, and M. A. Ilobinso, An Appraisal of the Offence of Rape under Nigerian Laws, 17 *UNIZIK Law Journal*, 116(2021). <https://journals.unizik.edu.ng/ulj/article/view/913/803>

<sup>59</sup> Akindele Richard Iyiola, Gender and Racial Differentials in the Nigerian Banking Industry, 6 *International Journal of Business and Management*, 228-233 (2011). <https://doi.org/10.5539/ijbm.v6n9p228>

<sup>60</sup> O. Bamisile, Marital assault and the Rights of a Nigerian Woman: A Concise Critique of the Penal Code, *LawPavillion Blog*, 2022. [https://lawpavilion.com/blog/marital-assault-and-the-rights-of-a-nigerian-woman-a-concise-critique-of-the-penal-code/#google\\_vignette](https://lawpavilion.com/blog/marital-assault-and-the-rights-of-a-nigerian-woman-a-concise-critique-of-the-penal-code/#google_vignette); Nigerian Tribune, Gender Matters, How the Penal Code enables violence against Women in Nigeria (2021). <https://tribuneonlineng.com/how-the-penal-code-enables-violence-against-women-in-nigeria/>

Another gender-based sexual crime in the CCA is indecent assault. Section 360 of the CCA states that: “[a]ny person who unlawfully and *indecently assaults* a woman or girl is guilty of a misdemeanour and is liable to imprisonment for two years.” This section is limited to assault. In the absence of physical touch or striking, it may not apply. Worthy of note in the PC is Section 281. This Section seems to protect the female gender against abduction and unwholesome sexually-based treatment. It states: “[w]hoever, in order to gratify the passions of another person, procures, entices, or leads away, even with her consent, a woman or girl for *immoral purposes* shall be punished with imprisonment which may extend to seven years and shall also be liable to fine.” This provision leaves the prosecution with the hurdle of first establishing what amounts to *immoral purpose*. Besides, the provision of section 281 suggests that if the woman was lured to a place for the purpose of working but was harassed sexually at the workplace, the offender would not be liable for prosecution under this section since the purpose for which she was lured or enticed is to work and not to *gratify the passions of another*. Furthermore, it seems that the person for whose gratification the woman was enticed or lured is not an offender and cannot be prosecuted since the section is particular about the one who lures or entices. These are serious gaps in the law which promote gender-based violence.

The offence of defilement as stipulated under the CCA is not without challenges also. Defilement is the most rampant sexual assault in Nigeria. This involves children who are a vulnerable group. Most times, the assailant threatens the children not to speak up<sup>61</sup> and makes prosecution difficult. Unfortunately, sections 218 and 221 of the CCA added additional encumbrance of limitation period. The sections provide that the prosecution of defilement of girl under 13 and between 13 and 16 years must be commenced within 2 months of the commission. These *lacunae* attribute to the ineffectiveness of these Codes as meaningful legislations for the protection of women against gender-based violence in the workplace and anywhere.

---

<sup>61</sup> Henky Fernando, The Dual Burden of Child Sexual Abuse: Victim Experiences and Law Implementation Gaps, 14 *Jurnal Hukum Novelty*, 154-169 (2023). <https://doi.org/10.26555/novelty.v14i2.a27059>

Women are being employed to enhance management/customers relationship in companies and businesses where physical appearance is not ordinarily relevant.<sup>62</sup> Again, certain roles or positions are subtly reserved for females in some private establishments, obviously for the physical interactions needed to enhance the relationship between the company and the public. Some of these are gender-based promotional activities and are unlawful in some jurisdictions.<sup>63</sup> Nigerian criminal laws are yet to address these modern gender concerns. As a result, sexual offenders who are accused of sexual harassment falling outside the traditional sexual crime of rape, indecent assault, defilement and the likes cannot be prosecuted under the present penal laws in Nigeria. This trend is changing in some jurisdictions because sexual crimes are increasing and the catalogue of what amounts to sexual harassment is extending. In London recently, a court was reported to have ruled that calling a woman “pretty” at work was sex discrimination as that comment would not be made to a man.<sup>64</sup> Even though this was not a criminal trial, the decision is a welcome development for the protection of women in the workplace.

It has been recognised that sexually coloured remarks in workplaces humiliate women and amount to discrimination if they have reasonable ground to believe that their objection would result in some disadvantages in connection with their employment.<sup>65</sup> These behaviours are still very rampant in Nigeria. For instance, in the case of *Stella Ayam Odey v Ferdinand Daapah & Cuso International*,<sup>66</sup> the NICN awarded damages against the 2<sup>nd</sup> defendant in favour of the claimant over the 2<sup>nd</sup> defendant’s sexual behaviours and remark such as, “your voice arrests me,” and other unwelcome sexually determined behaviours (USDB) which

---

<sup>62</sup> *Dorothy Adaeze Awogu v TFG Real Estate Limited*, Unreported suit No. NICN/LA/262/2013, delivered on 4th June, 2018

<sup>63</sup> *Gender-Based Sales Promotions: Good Business or Unlawful Discrimination?* (Foley Blogs, 11 April 2016). <https://www.foley.com/insights/publications/2016/04/genderbased-sales-promotions-good-business-or-unla/>

<sup>64</sup> *Calling Woman Pretty at Work is Discrimination, Judge rules.* (The Sunday Times, 5 May 2024, London). <https://www.thetimes.co.uk/article/calling-women-pretty-at-work-is-sex-discrimination-rules-judge-9d8z06hn2>

<sup>65</sup> CEDAW general recommendation No. 19, 1992 : Violence against women, 1992, <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>

<sup>66</sup> *Stella Ayam Odey v Ferdinand Daapah & Cuso International* Suit No: NICN/ /CA/ 03/2016 delivered on 13th January, 2017

included smacking claimant's butt, unsolicited embrace and the sacking of claimant upon the emergence of her wedding invitation. While the Nigerian industrial courts are trying their best to advance the jurisprudence on the issue of sexual harassment, the Nigeria is expected to harmonise its industrial and human rights laws with its obligations at international law. This has not been fully realised in Nigeria. The CCA and PC, for instance, should be reviewed to be more gender sensitive and protective of Nigerian women. Nigerian penal laws should also criminalise some USDB, like sexual advances, sexual demands - whether in action or words, remarks regarding sexuality in the work place, sexual threats, jokes and innuendos, request for sexual favour, etc. This will demonstrate more seriousness on the part of Nigeria in the assessment of her commitment towards her international responsibilities to eliminate all forms of discrimination against women.

#### ***B. Violence against Persons (Prohibition) Act***

The Violence against Persons (Prohibition) Act (VAPPA) was enacted in 2015 to eliminate violence in public and private life and to prohibit all manner of violence against both the male and female gender. The preamble of VAPPA states that the aims of the law include providing maximum protection and remedies for victims and punishment for offenders. The focus of the Act is the protection of all persons and not women alone. This was however not the original intentions of those who sponsored the Bill. The Bill was intended to address violence against the female gender but the Nigerian National Assembly being a male-dominated legislative house rejected this perspective.<sup>67</sup>

To this extent, this piece of legislation that would have been the first comprehensive legal instrument criminalising violence against women in Nigeria was rendered gender neutral. By rendering the law gender neutral, the legislatures successfully diluted the effectiveness of the law as a piece of legislation meant to tackle domestic and gender-based violence (GBV). The law as it is (being a general law) does not directly draw the attention of offenders to the fact that there is a prohibition of the act of violence against women. This lack of consciousness

---

<sup>67</sup> Eghosa Ekhaton, Protection and Promotion of Women Rights in Nigeria: Constraints and Prospect in Addaney, M. (ed) *Women and Minority Rights Law: African Approaches and Perspective to Inclusive Development*. Eleven International Publishing, Netherlands, 17-35 (2019).

that there is a law which forbids violence against women does not also reveal the severity of the consequences for violating the female gender. A gender sensitive title of a law of this nature is on its own capable of communicating the importance of the legislation.

Under VAPPA, the offence of rape can be committed by both sexes. This is the most significant innovation brought by the Act which was warmly approved by the lawmakers for bringing gender parity into the law of rape. Though this neutral gender stance of the Act is an advantage, especially for generally addressing the ever-rising wave of GBV, it still does not place emphasis on women as the more vulnerable victims of sexual harassment and domestic violence. The position of the CCA and PC that the offence of rape can only be committed by male and against female was equally proposed to be changed by a Bill at the National Assembly. This is the Criminal Code (Amendment) Bill. It was introduced into the House in 2019 and was recommended for passage by the National Assembly Committee on Judiciary, Human Rights, and Legal Matters since 2020.<sup>68</sup> It appears, however, that the Bill was abandoned by the 10<sup>th</sup> National Assembly which assumed office in 2023. The VAPPA does not apply throughout Nigeria. It only applies to the Federal Capital Territory. Thus, amending the CCA is a more ideal option. Opposition to the Bill argued that amendment of the CCA ought to be holistic and not piecemeal.<sup>69</sup> The rationale for this opposition appears misplaced as it is not necessary to overhaul a whole criminal code just for the asking. Amendment ought to flow from challenges in application of the law. At the moment, males and females can be prosecuted for rape and can also be complainants in rape cases in many parts of Nigeria as several States have enacted the VAPPA as a State Law.

The VAPPA and the various State Laws have also improved on the position of the CCA which required proof of penetration of the vagina. Under the CCA and PC, the offence of rape must fail except the prosecution is able to prove that the defendant penetrated the vagina of the victim with his penis.<sup>70</sup> The VAPPA,

---

<sup>68</sup> The Senate Federal Republic of Nigeria National Assembly Committee on Judiciary, Human Rights, and Legal Matters Report 2020. <https://placng.org/i/wp-content/uploads/2020/07/Senate-Report-on-Criminal-Code-Act-Amendment-Bill-2019.pdf>

<sup>69</sup> *Ibid.*

<sup>70</sup> *Idam v Federal Republic of Nigeria* (2020) All FWLR (Pt1062) 248, 555-556.

though, widely celebrated as great improvement on the law of rape in Nigeria,<sup>71</sup> the whole enactment is just one of the numerous gender-neutral penal legislations in the country. Thus, it was suggested that there is need instead to “adopt non-policy measures such as education and awareness-raising as additional measures to eliminating discrimination and promoting equality.”<sup>72</sup>

### **C. *The HIV and AIDS (Anti-Discrimination) Act***

The HIV and AIDS (Anti-Discrimination) Act 2014 (HAADA) is one of the earliest legislations made specifically to compliment the Constitution in the protection of certain fundamental rights. The rights articulated in the HAADA include freedom from discrimination and the right to dignity of the human person. The HAADA seeks to protect the dignity of people living and affected with HIV and AIDS and to eradicate any manner of segregation on the bases of HIV status. Under section 6(i) of the HAADA it is an offence to discriminate against any person living with (PLW) HIV/AIDS in any place of human endeavour. By section 7 employers are under obligation under this law to provide reasonable accommodation to support PLW HIV. The NICN has explained this law to mean that an employee cannot be mandatorily required to carry out HIV test as HIV test is not part of medical fitness test.<sup>73</sup> The HAADA does not have any special provision protecting women living with HIV in spite of the peculiarities of women as “reproducers, caregivers, sexual outlets, and agents of family prosperity.”<sup>74</sup> African customs and traditions are designed to subjugate the woman. Thus, they naturally make women feel less important, suppressed and stigmatised. Women, especially in Africa, are battling with cultural and social restrictions, thus it is worse when they are suffering from additional stigma of a health status like HIV/AIDS. It is easier for men to cope with non-acceptance in

---

<sup>71</sup> Anthony N. Nwazuoke, A Critical Appraisal of the Violence against Persons (Prohibition) Act, 2015, 47 *Journal of Law, Policy and Globalization*, 69-76 (2016). <https://core.ac.uk/download/pdf/234650546.pdf>

<sup>72</sup> Onyeka C. Okongwu, Are Laws the Appropriate Solution: The Need to Adopt Non-policy Measures in Aid of the Implementation of Sex Discrimination Laws in Nigeria, 21 *International Journal of Discrimination and the Law*, 26-46 (2021). <https://doi.org/10.1177/1358229120978915>

<sup>73</sup> Mr. X v Jakobus Brinks & 3 Ors. Unreported Suit No. NICN/ABJ/37/464/2016)

<sup>74</sup> Rbecca de Souza, ‘Women living with HIV: Stories of Powerlessness and Agency, *Women Studies International 33 Forum* 244-252 (2010). <https://doi.org/10.1016/j.wsif.2010.01.006>

workplaces and in other public environment on account of discrimination than women. Women are naturally more reserved, reflective and scared of being ridiculed or criticised.<sup>75</sup> This is worse with the undignifying status of being HIV positive. These gender considerations are not reflected in the HAADA. Unlike men who are more outgoing, many African women are withdrawn as they suffer from the social and cultural challenge of low self-esteem and male dominance. Thus, there are palpable gender issues relating to women living with HIV which are not addressed in the HAADA.

#### ***D. Discrimination against Persons with Disability (Protection) Act***

Disability is a risk multiplier in that it amplifies pre-existing social inequalities and power imbalances as it cuts across gender, age and socioeconomic status.<sup>76</sup> From the recent Global Survey Report on Persons with Disabilities and Disasters 2003, persons with disabilities amount to 16 per cent of the world's population, with 80 per cent of PLWD in the Global South. The report also shows that more women (53 per cent) than men (45 per cent) with disabilities responded to the 2023 survey. This, if read against previous reports, may be an indicator that more women suffer disabilities than men. For instance, the 2006 census which is the latest census in Nigeria put the number of people with disability at 3,253,169. Out of this, women and children with disabilities were put at 1,544,418 and 1,002,062, respectively.<sup>77</sup>

Discrimination against Persons with Disability (Prohibition) Act (DAPWDPA) was enacted in 2018 as part of international obligation of Nigeria towards the United Nations. Nigeria ratified the United Nations Convention on the Rights of People with Disabilities in 2007 and its Optional Protocol of 2010. Since then, pressure groups, scholars<sup>78</sup> and people living with disabilities (PLWD) have

---

<sup>75</sup> S. Ramazan, *Women in Management* (Master Thesis, Luleå University of Technology, Sweden, 2010) 34.

<https://www.diva-portal.org/smash/get/diva2:1018279/FULLTEXT01.pdf>

<sup>76</sup> Global Survey Report on Persons with Disabilities and Disasters, 2023.

<https://www.undrr.org/media/90432/download?startDownload=20240505>

<sup>77</sup> Edwin Etieyibo and Odirin Omiegbe, Religion, Culture, and Discrimination against Persons with Disabilities in Nigeria, 5 *African Journal of Disability*, 1-6 (2016). <http://dx.doi.org/10.4102/ajod.v5i1.192>

<sup>78</sup> Ibrahim Imam and M. A. Abdulraheem-Mustapha, Rights of People with Disability in Nigeria: Attitude and Commitment, 24 *African Journal of International and Comparative Law*, 439-459 (2016). <https://doi.org/10.3366/ajicl.2016.0163>

continued to pressurise the government to provide a domestic legal framework for the realisation of the rights of the disabled at home. Section 1 of the DAPWDPA states that a PLWD shall not be discriminated against on the basis of his condition and in the event of breach, the offender shall be liable to pay the sum ₦1,000,000.00 if it is a corporate body and the sum of ₦100,000 or six months imprisonment or both if he is an individual. Section 27 of the Act places a duty on employers to give PLWD first consideration in the discharge of their responsibilities towards the employees while section 17 (2) grants PLWD the right to free education up to secondary level. By section 21(1), PLWD shall have right of free access to adequate healthcare without discrimination. Very importantly, a PLWD has right to equal pay with others of his or her co-employees. This includes the right to opportunity to earn a living by doing any work of his or her choice in the labour market or workplace that is open to all. Whoever infringes on this provision is liable to pay the sum of ₦500,000 if it is a corporate body or ₦250,000 if he or she is an individual. The law also makes it mandatory for every public organisation to have about 5 per cent of PLWD in its workforce. The DAPWDPA equally requires that PLWD be encouraged to participate in politics. Unfortunately, like the HAADA, the DAPWDPA does not recognise or give special treatment to women who are living with disabilities. A survey had revealed that women and girls with disabilities in Nigeria are the most vulnerable groups.<sup>79</sup> Women are weaker sex and become weaker with disability. For instance, in a study conducted on 323 PLWDs, 51.1 per cent of the participants had difficulty in physical mobility and this was more in females than males.<sup>80</sup> This is why the Committee on the Elimination of Discrimination against Women recognised and resolved in 1999 pursuant to article 21 of CEDAW that certain class of women require further attention in addition to the attention they receive on account of being women. This is because women suffer

---

<sup>79</sup> Women and Girls with Disabilities in Nigeria are the Most Vulnerable Groups but the System Doesn't Care (International Centre for Investigative Reporting, 2020). <https://www.icirnigeria.org/women-and-girls-with-disabilities-in-nigeria-are-the-most-vulnerable-groups-but-the-system-doesnt-care/#:~:text=According%20to%20the%20World%20Disability,living%20with%20disabilities%20are%20female>.

<sup>80</sup> Peace N. Ani, Scholastica N. Eze and Philomena I. Abugu, Socio-Demographic Factors and Health Status of Adults with Disability in Enugu Metropolis, Nigeria, 33 *Malawi Medical Journal*, 37-47 (2021). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8360292/pdf/MMJ3301-0037.pdf>

from multiple discrimination on account of additional factors like disability, HIV status, age, class, etc. These additional factors constitute a different level or degree of discrimination against women in different ways than against men.<sup>81</sup>

From the foregoing, Nigerian criminal laws generally do not address workplace discrimination. Though more recent legislation like the HAADA and DAPWDPA places criminal sanctions on discrimination against persons protected in those statutes, these instruments provide general protection without regard to the special need of the female gender. To improve on the protection of women in the workplace, Nigerian penal legislation requires a deliberate review to identify the peculiarity of the female gender. The article further suggests that modern laws of crime relating to workplace discrimination should prioritise women special needs including maternity protection, women's reproductive healthcare, child bearing, childcare, and the general condition of women as the weaker gender and align legislative protective measures with such needs. This will make the Nigerian criminal justice system more responsive to gender-based workplace discrimination.

#### **IV. Conclusion**

The Nigerian Constitution by its amendment in 2010 recognises sexual harassment as a civil wrong but does not contain any specific substantive provision protecting the rights of women from sexual discrimination even though it provides generally for the principle of equality and non-discrimination on the basis of sex and other status. This general reference to non-discrimination on the ground of sex has not adequately dealt with issues of gender disparities which exist along several lines in Nigeria. Cases founded on sexual harassment are still taking their bearing from the general non-discriminatory provisions of the Constitution. This is because section 254C (1) (g) of the Constitution does not fall within the fundamental rights provisions of the Constitution. The article suggests that the Constitution should be amended to give effect to specific rights

---

<sup>81</sup> CEDAW General recommendation No. 25, 1999 on article 4, paragraph 1, of the convention on the elimination of all forms of discrimination against women, on temporary special measures.  
[https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf).

of women, which will in turn positively affect the way working women are treated in the workplace.

The Labour Act in some ways discriminates against working women contrary to the provisions of Section 42 of the Constitution and several treaties and international best practices. The provisions of Sections 55 and 56 of the Labour Act which prohibit women from night and underground work are no longer in furtherance of the right of equal access to employment opportunity and should be expunged from the Act. Modern labour laws should promote equality and protect the liberty of women to choose when and where to work and the kind of work they want to be involved in like their male counterpart. The article suggests that the Act be amended to accommodate provisions that directly prohibit discrimination in the workplace no matter which form it takes. Such laws should equally provide adequate sanctions for the breach of women's employment rights including maternity rights, reproductive healthcare rights and so on, to serve as sufficient deterrent to employers who violate the law.

The Police Regulations are highly offensive to the rights of women in the Force. Even though the Courts have struck down a number of them, the discriminatory practices continue. This is because the recent police reform did not directly address the issue. This article suggests that the Police Act 2020 should be reviewed with the aim of directly excluding all discriminatory regulations with provisions for the punishment of violators.

The Nigerian labour laws require gender specific and penal legislation to give teeth to the general provisions of Section 42 of the Constitution. The Constitution equally yearns for a review to include NICN in the list of courts which can enforce the provisions of fundamental rights provided in Chapter IV of the Constitution. This is to avoid the procedural gap created by Section 254C (1) (g) which gives the NICN jurisdiction over matters relating to discrimination (which is a fundamental right) and sexual harassment in the workplace. A review of the Constitution should be aimed at enabling the NICN to apply the Fundamental Right (Enforcement Procedure) Rules so as to enable the industrial court take advantage of the simplicity of the procedure in those rules. Furthermore, to improve women's access to justice in the fight against workplace discrimination, more judicial divisions of the NICN should be established across the country. In the same vein, there is need for concerted public awareness via vigorous

campaigns at all levels of government in Nigeria against all social, cultural and religious norms which promote prejudices against women.