

AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN AGAINST WORKPLACE DISCRIMINATION IN NIGERIA

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Abstract

Workplace discrimination is a form of discrimination on the ground of gender, race, religion, and place of origin, age, physical or mental disability by employers or colleagues at the workplace. Discrimination against women in the workplace is evident in the stages of recruitment, pendency of the contract of employment to the termination of the employment contract. In the workplace, there exist gender gaps in the employment rights of women. Women in the work setting suffer from discriminatory practices, unequal training and employment opportunities, promotion and benefits, restriction on reproductive rights, wage parity etcetera. In a bid to protect female employees from the various vices within employment relations which they are faced with in their place of work, the working woman in Nigeria has legal protection under domestic, regional and international legal instruments. The purpose of this paper is to critically examine these legal instruments that protect women in the work environment and the adequacy or otherwise of their protection. This research reveals amongst others that although the Labour Act which is the principal domestic legislation on labour matters in Nigeria has protective provisions in relation to pregnant and nursing mothers, there is no provision prohibiting sexual harassment or any kind of discrimination during employment and its provisions on maternity rights of women as well as the sanctions for the breach of same is grossly inadequate.

Keywords: Legal Framework, Protection, Women Workers, Workplace Discrimination

1. Introduction

Nigeria is a federal state with a population of over 200 million and over 250 ethnic groups¹ and women constitute about half of the populace.² The Nigerian woman like in other African societies has suffered from discrimination right from birth. This discrimination is reinforced through agents of socialization such as the family, churches and mosques, school as well as through social media platforms.³ Discrimination against women has permeated into the work environment, and same is perpetuated against women in the workplace partly due to the patriarchy system in most societies combined with religious influences which relegate women to a secondary position in the scheme of things.⁴ Unfortunately, some laws in Nigeria appear as

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¹ Damilare Damidez, 'Nigeria has over 250 Ethnic Groups (See List)' 27 July 2020 <<https://naijabibliography.com>> accessed 30 August 2023.

² Godiya Allanana Makama, 'Patriarchy and Gender Inequality in Nigeria: The Way Forward' (2013) 9 (17) *European Scientific Journal* 115-144, <<https://core.ac.uk>> accessed 30 August 2023.

³ Gender and Gender Inequality- Introduction to Sociology available at <<https://openstax.org>> accessed 30 August 2023.

⁴ EM Akpambang, 'A Critical Appraisal of the Legal and Policy Frameworks for the Protection of Women's Rights in Nigeria' (2020) 10 (1) *American International Journal of Contemporary Research*, 17-31 <<https://doi.10.30845/ajcr.v10n1p3>>.

promoting the practice of discrimination against women.⁵ The purpose of this paper is to critically examine these legal instruments for the purpose of ascertaining whether or not they provide adequacy protection in the workplace.

Generally, there exist laws protective of women workers from discriminatory employment practices in their workplaces. These laws exist at domestic, regional and international level.

2. Domestic Instruments

Laws protecting women from discrimination in the Nigerian workplace is contained in the 1999 Constitution⁶ and the Labour Act.⁷

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

Section 42 of the 1999 Constitution (as amended) in Chapter IV on Fundamental Rights provides for the rights of all citizens to freedom 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 of 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. In the work setting, there are employers who prohibit women workers from getting pregnant over a period of time or terminate their employment when found to be pregnant etc. These discriminatory practices against women are a violation of the principle of non-discrimination and equality enshrined in section 42 of the Nigerian Constitution.

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, although the rights in section 33-44 are general rights enjoyed by all including women. The 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. The Malawi Constitution⁸ for instance, apart from providing for equality in section 20 of its general human rights provisions specifically provides in section 24 for the rights 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.

⁵ CS Ibekwe, 'Equal Pay and Comparable Worth: Conceptual and Functional Bearings to Closing Nigeria's Gender Pay Gap' (2020) 100 *Journal of Law, Policy and Globalization*, 30-39 <<https://doi.10.7176/JLPG/100-04>>.

⁶ CFRN 1999 Cap C23 LFN, 2004.

⁷ Labour Act Cap L1 LFN, 2004.

⁸ Malawi Constitution 1994 (rev. 2017) available at <<https://www.constituteproject.org>> accessed 2 August 2023.

The Nigerian Constitution in furtherance of social order in Chapter 11, states that ‘every citizen shall have equality of rights, obligations and opportunities before the law.’⁹ Section 17(3) among other things provides for equal pay for equal work without discrimination on account of sex or on any other ground. It is evident from this section in chapter 11 on Fundamental Objectives and Directive Principles of State Policy that all forms of employment discrimination are prohibited particularly sex and wages.¹⁰ However, the provisions contained in chapter 11 of the Constitution are not justiciable by reason of the provisions of the same constitution¹¹ and any action instituted under them will be unenforceable and government is not obligated to act on them. They are mere guideline to the government in the formulation of policies.

2.2 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 provision prohibiting any kind of discrimination in the workplace. The Labour Act of Ghana¹² for instance, in section 68 provides that ‘every worker shall receive equal pay for equal work without distinction of any kind.’ 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.’¹³ 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 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.¹⁴ 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. The right to maternity leave applies to all women in any public or private industrial or commercial undertaking and includes an agricultural

⁹ CFRN 1999 (n 5) s 17(2) (a).

¹⁰ Ibid, s17 (3) (a) (b) (c) and (e).

¹¹ Ibid, s6(6)(c). Brown Etareri Umukoro, ‘Revisiting the Non-Justiciability Issue in Environmental Rights Dialogue in Nigeria’ (2023) 25 (2) *Environmental Law Review*, 101-119, <<https://doi.10.1177/14614529231168491>> and E. Azinge, ‘Econometrics of the Justiciability Proposition’ in Azinge E, and Owasanoye B (eds) ‘Justiciability and Constitutionalism: An Economic Analysis of Law’ (Lagos: NIALS, 2010) at 5; OVC Ikpeze, ‘Non-Justiciability of Chapter 11 of the Nigerian Constitution as an Impediment to Economic Rights and Development’ (2015) 5 (18) *Developing Country Studies*, 48-56, <<https://www.researchgate.net/publication/282816601>> accessed 6 October 2023, DON 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’ (2022) 10 (1) *International Journal of Innovative Legal & Political Studies*, 117-125 <<https://www.seahipaj.org>> accessed 6 October 2023. See also *Morebishe v Lagos State House of Assembly* (2000) 3 WRN 134; *Ukaegbu v Attorney-General of Imo State* (1984) 1 SCNLR 212 and *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt.772) 222.

¹² Labour Act, 2003 available at <<https://www.ilo.org>> accessed 2 August 2023.

¹³ See generally B. E. Umukoro and P. 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’ (2022) *Beijing Law Review*, 13, 948-966. <https://doi.org/10.4236/blr.2022.134061>

¹⁴ Ibid, ss 63(3)(b) and 64 (1)(2)(a)(b)(c).

undertaking.¹⁵ A woman is entitled 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.¹⁶ The Act also provides 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.¹⁷ Nursing mothers are allowed half an hour twice a day to nurse their babies during working hours.¹⁸

Very remarkably, the Act also 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.¹⁹ According to the National Industrial Court, a woman's right to maternity leave belongs to every pregnant woman either married or unmarried who is working in any public or private industrial undertaking, or in any agricultural undertaking. The maternity leave commences 6 weeks before the expected day of delivery and 6 weeks after delivery; this is 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*,²⁰ 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*,²¹ 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.

The protective provision on women in the Labour Act also includes prohibition of women from night work and underground work.²² There are however exceptions to the provisions of these sections. Although, the provisions in sections 55 and 56 of the 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. These provisions are adverse to the international Equal Remuneration Convention (No.100) of 1951 which calls for equal job opportunities for men and women. Pointedly, a violation of the

¹⁵ Labour Act (n 2) s 54 (1).

¹⁶ Ibid, s 54(1)(a)(b).

¹⁷ Ibid, s 54(1)(c).

¹⁸ Ibid, s 54(1)(d).

¹⁹ Ibid, s 54(4)(b).

²⁰ (2012) 27 NLLR (Pt 76) 110 NIC.

²¹ (1974) CCHCJ/2/74 at 159.

²² Labour Act (n 6) ss55 and 56.

aforementioned provisions by an employer is an offence under the Act.²³The 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.

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 a 14 weeks maternity leave and 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 exceeded same which shows the importance of maternity protection for women. For instance, the Nigerian government increased maternity leave for female employees to 16 weeks.²⁴While the Labour Act in its maternity protection provisions under section 54 is restricted to maternity leave of 12 weeks and a nursing 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. I must not also fail to mention here that the Maternity Protection Convention, 2000 (No. 183) is yet to be ratified by the Nigerian government.

3. Regional Instruments

Nigeria is a party to some regional legal instruments which frowns at discrimination against women. These instruments are aimed at protecting the right and dignity of women. They include:

3.1 African Charter on Human and Peoples' Rights 1981

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is another instrument which fights against discrimination on grounds of sex. It was adopted in Nairobi on the 26th of June 1981 but entered into force in 1986. The African Charter on Human and Peoples' Rights provides for equality and equal protection of all persons before the law.²⁵ It provides every individual the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.²⁶Article 18 (3) enjoins member States to ensure discrimination against women is eradicated. This can be extended to mean every form of discrimination against women workers in the workplace is prohibited by the Charter. Female workers in workplaces in Nigeria experience sexual harassment, a form of workplace discrimination. This is a violation of the provisions of Article 16 of the Charter, as sexual harassment has a negative effect on the mental health of the affected individual thereby resulting in health issues and low productivity of the individual at work. The African Charter was domesticated into Nigerian law on the 17th of

²³ Ibid, s58.

²⁴ Ebuka Onyeji, 'Nigerian Government increases Maternity Leave to Four Months' 6 June 2018 <<https://www.premiumtimesng.com>> accessed 2 August 2023.

²⁵ ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <<https://www.refworld.org/docid/3ae6b3630.html>> accessed 8 August 2023, Article 3(2).

²⁶ Ibid, Article 15.

March, 1983 through the promulgation of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.²⁷

3.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is also known as the Maputo Protocol. It remains one of the most progressive legal instruments providing a comprehensive set of human rights for African women, as it covers the entire spectrum of civil and political, economic, social, cultural as well as environmental rights.²⁸ The Maputo Protocol was adopted by the African Union on the 11th of July 2003 at its second summit in Maputo, Mozambique. It entered into force on the 25th of November 2005, after it was ratified by 15 member states of the African Union. Nevertheless, as at June 2023, 44 out of 55 African Union Member States have ratified the Maputo Protocol on Women's rights, with the Republic of South Sudan being the 44th African Union Member State to deposit its instruments of ratification to the AU Commission on the 7th of June 2023.²⁹ Nigeria is a signatory to the Maputo Protocol and it was ratified by Nigeria on the 16th of December 2004 while it is yet to be domesticated into Nigerian law.³⁰ However, Nigeria has enacted laws that promote the human rights of women which incorporate some aspects of the Maputo Protocol such as the Violence against Persons Prohibition Act (2015) and the National Gender Policy (2006).

The Maputo Protocol contains pertinent provisions which are geared towards safeguarding the human rights of women and girls in Africa. It is therefore an important instrument for advancing women's rights in Africa if it is fully implemented. Some of the significant provisions of the Maputo Protocol includes; elimination of discrimination against women, right to dignity, the rights to life, integrity and security of the person, elimination of harmful practices, access to justice and equal protection before the law, right to participate in the political and decision-making process, right to education and training and economic and social welfare rights.³¹

As earlier stated, Nigeria is yet to domesticate the Maputo Protocol. The failure of the Nigerian government to domesticate the Maputo Protocol has negatively affected the economic right of Nigerian women as they have been deprived of the opportunity to invoke the provisions of the Maputo Protocol to enforce their economic rights in the field of employment. Hence, they continue to grapple with discrimination in the workplace. Discrimination in the work environment is not limited to Nigeria alone, as it has been observed that discrimination at work is a global phenomenon. For instance, recent studies in Europe reveal that discrimination in hiring and recruitment against second-generation younger immigrants in France is prevalent, especially

²⁷ Cap A9, LFN 2004.

²⁸ Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa (Submitted by the Women, Gender and Development Directorate (WGDD) of the African Union Commission) <<https://au.int>> accessed 8 August 2023.

²⁹ African Union, 'Maputo Protocol on the Rights of Women in Africa: Commemorating 20 Years' 5 July 2023 <<https://au.int>> accessed 6 October 2023.

³⁰ Luminous Jannamike, 'CSOs to FG: Take Crucial Steps to Protect Women's Rights' 12 July 2023 <<https://www.vanguardngr.com>> accessed 6 October 2023.

³¹ 11 July 2003, available at <<https://www.refworld.org/docid/3f4b139d4.html>> accessed 10 May 2023, Articles 2, 3, 4, 5, 8, 9, 12 and 13.

against persons of North African origin.³² Moreso, a current study in South Africa on stigma and discrimination in the workplace showed that the greatest fear among people was concentrated on relations with colleagues.³³

Pointedly, Article 13 of the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa enjoins all State Parties to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. To achieve this, they shall:

- (a) promote equality of access to employment;
- (b) promote the right to equal remuneration for jobs of equal value for men and women;
- (c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace, amongst other listed items.

It is clear from the above provision of the Maputo Protocol that women have equal rights with men in relation to employment rights and they are not to be discriminated against by employers under any circumstances. Thus, taking into consideration the aforementioned provision of the Maputo Protocol, the domestication of the Protocol will no doubt advance the economic right of women in workplaces in Nigeria. Under the Nigerian Labour Act, section 34 discriminates against working women as only male workers are entitled to be accompanied to their place of employment by such members of their family, not exceeding two wives and children under sixteen years of age they wish to take with them. Furthermore, sections 55 and 56 of the Act discriminates against women in the disguise of protecting women by prohibiting women from underground work and night work, though with some exceptions. Therefore, the Maputo Protocol as a legal instrument which advocates for gender equality and spells out in Article 13(d) and (k) among others that State Parties should guarantee women the freedom to choose their occupation, recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children can be relied on by working women in Nigeria to canvass and enforce their economic and social welfare rights pertaining to the workplace when domesticated into Nigerian law.

4. International Instruments

There are international legal instruments which help to protect the rights of women from discrimination, as well as promote equality of both sexes. International instruments refer to conventions, treaties, protocols and recommendations prescribed by the International Labour Organisation or such treaties entered into by nations on employment, labour and industrial relations which are a source of international labour standards in the workplace, and other places of interactions and industrial relations.³⁴ These international treaties and conventions includes but not limited to the following:

³² International Labour Office, 'Fact Sheet on Discrimination at Work in Africa' 1-2, <<https://www.ilo.org>> accessed 6 October 2023.

³³ Ibid at 2.

³⁴ RE Idaeho, 'The Applicability of Unratified International Instruments in Nigeria Labour Court' (2019) 1-9 <<https://www.papers.ssrn.com>> accessed 8 August 2023.

4.1 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1981

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the Conventions whose provisions seek to protect the rights of women and provide them with better employment conditions. It is an all-embracing international tool for combating all forms of discrimination against women, including the numerous legal and social norms that create obstacles for women at work.³⁵ It also contains guidelines that prohibit discrimination and this is applicable to both internal structures of business and corporate governance as well as actions of corporations as they discriminate against and affect women externally.³⁶ CEDAW as an important human right instrument deals with the rights of women and its provisions touch on the social, cultural, economic and political lives of women. It states in its Article 1 that:

...the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of women, irrespective of their material status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

To ensure compliance with these provisions, the CEDAW³⁷ enjoins State Parties to create measures to eliminate discrimination against women in employment to promote equal rights of men and women. Thus, by the provisions of the CEDAW, discrimination against women in the field of employment is unlawful. The CEDAW is however treated by governments and most non-governmental organizations as a document dealing with women’s rights, not human rights.³⁸ This is manifested in the provisions of the Convention, especially Articles 2 and 16 that are very contentious in terms of interpretation and Implementation by State Parties. These provisions reflect some of the crucial problem facing women’s equality, whether they can or should be seen as equal to men, or whether their peculiar reproductive roles, marriage, and religious/cultural group membership support differential treatment.³⁹ It was therefore observed in a case study of Iran by Natasha Shokri that Iran did not ratify CEDAW due to its incompatibility with Sharia Law.⁴⁰ CEDAW was adopted by the General Assembly of the United Nations in 1979 and came into force on 3rd September 1981 and up to date, 185 countries have ratified it. Nigeria became a signatory to CEDAW on 23rd April 1984 and subsequent ratification took place on 13th June 1985.⁴¹

³⁵ Ama Marston, ‘Women, Business and Human Rights: A Background Paper for the UN Working Group on Discrimination against Women in Law and Practice’ (2014) 1-46 <<https://www.academia.edu>> accessed 6 October 2023.

³⁶ Ibid at 8.

³⁷ 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <<https://www.refworld.org/docid/3ae6b3970.html>> accessed 8 August 2023, Article 11(1).

³⁸ Arooj Malik, ‘Convention on Elimination of Discrimination against Women (CEDAW)’ <<https://www.academia.edu>> accessed 6 October 2023.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ See generally <<https://tbinternet.ohchr.org>> accessed 8 August 2023.

4.2 Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) 1948 was proclaimed by the United Nations' General Assembly in Paris on the 10th day of December 1948. It sets out the fundamental rights which are to be universally protected and enforced by member States. The UDHR proclaims the right not to be discriminated against on the basis of sex, amongst others in order to enjoy the rights contained in it.⁴²

In its Article 23, the UDHR states as follows:

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone without any discrimination has the right to equal pay for equal work.
- (3) Everyone who works has right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and join trade unions for the protection of his interests.

The UDHR by virtue of the above provision recognises the equality of both genders in employment matters. Also, the UDHR by virtue of Article 25 makes a case for women to the effect that motherhood and childhood are entitled to special care and assistance which has resulted in several countries granting women maternity rights within their labour legal instruments.⁴³

4.3 Discrimination (Employment and Occupation) Convention 1958 (No. 111)

The Discrimination (Employment and Occupation) Convention 1958 was adopted in Geneva, at the 42nd International Labour Conference session of the International Labour Organisation on 25th June 1958 and it came into force on 15th June 1960.⁴⁴ It was ratified by Nigeria on 2nd October 2002.⁴⁵ This Convention is the most pertinent antidiscrimination tool of the ILO because of its universal coverage with regards to the various forms of discrimination and reasons for discrimination.⁴⁶ Its preamble refers to the principle of the declaration of Philadelphia considered as the mission of the ILO which constitutes the ground for the ILO's law making activity on the

⁴² 10 December 1948, 217 (111), available at <<https://www.refworld.org/docid/3se6b3712c.html>> accessed 8 August 2023, Article 2.

⁴³ JN Ezeilo, 'Women, Law and Human Rights: Global and National Perspectives' (Acena Publishers 2011) 246 cited in David Tarh-Akong Eyongndi and Chi Johnny Okongwu, 'Interrogating the National Industrial Court Strides towards attaining Safe Workplace for Nigeria's Female Workers' (2021) 6 (1) BiLD Law Journal, 122-146 <<https://www.academia.edu>> accessed 6 October 2023.

⁴⁴ C111, 25 June 1958, C 111, available at <<https://www.refworld.org/docid/3ddb680f4.html>> accessed 8 August 2023.

⁴⁵ Adebayo Adekola, 'ILO Conventions covering Fundamental Principles and Rights at Work in Nigeria' 14 September 2023 <<https://businessday.ng>> accessed 6 October 2023.

⁴⁶ Constance Thomas, 'Information Sources and Measures of International Labour Standards on Employment Discrimination' (2003) 24 COMP. LAB.L. & POL'Y J, 366-367 cited in Matteo Borzaga, 'Accommodating Differences: Discrimination and Equality at Work in International Labour Law' (2006) 30 Vermont Law Review 749-784, <<https://lawreview.vermontlaw.edu>> accessed 6 October 2023.

matter of workplace discrimination.⁴⁷ This instrument is one of the fundamental conventions on discrimination. It defines and prohibits discrimination. Article 1 of this ILO Convention defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (or such other ground as may be specified by the state concerned), which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. This definition which includes both employment and occupation discrimination points out that antidiscrimination rules relates to employment access and free choice of occupation.

This Convention makes provision for cases which are not regarded as discrimination. Article 5 of the Convention among other exceptions provides for special measures to protect some groups of workers. These measures established by other acts of the International Labour Conference, are not considered as discrimination. However, to tackle workplace discrimination, Articles 2 and 3 of the Convention respectively specifies the role of each ratifying member state in promoting equal treatment of all workers. To this end, member states are required to develop a specific national policy which content must be consistent with the different measures the Convention requires each member state to carry out.

4.4 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976

By virtue of Article 27, the ICESCR was adopted in December 1966 and came into force in January 1976. The ICESCR was ratified by Nigeria on the 29th of July, 1993 but it is yet to be domesticated as part of Nigerian laws. The preamble and Article 3 mandates State Parties to ensure the equal protection and guarantee of economic, social and cultural rights of its citizens without any form of discrimination. It also guarantees the right of everyone whether male or female to work or freely choose where they will work.⁴⁸ Article 7(a) (i) provides for just and favourable conditions of work to include:

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

It can be gleaned from the above provision that discrimination against women in the workplace is prohibited and that both genders are to enjoy equal conditions of work. The ICESCR also ensures that the right of employed women are protected at the workplace during a reasonable period before and after childbirth.⁴⁹

4.5 Equal Remuneration Convention, 1951(No.100)

The International Labour Organisation (ILO) after the Declaration of Philadelphia in 1944 adopted two different Conventions accompanied by two recommendations to address workplace discrimination.⁵⁰ The first Convention was on equal remuneration, and the second Convention

⁴⁷ Matteo Borzaga, 'Accommodating Differences: Discrimination and Equality at work in International Labour Law' (2006) 30 *Vermont Law Review* 749-784, <<https://lawreview.vermont.edu>> accessed 6 October 2023.

⁴⁸ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <<https://www.refworld.org/docid/3ae6b36c0.html>> accessed 8 August 2023, Article 6.

⁴⁹ *Ibid*, Article 10.

⁵⁰ Matteo Borzaga (n 47) 757.

was dedicated to discrimination in employment and Occupation.⁵¹ The Convention on Equal Remuneration analyses one of the main impact of discrimination which is unequal remuneration between men and women. Its aim is to eradicate this particular form of discrimination, and affirms the fundamental principle that every worker (man or woman), has the right to receive an equal remuneration for work of equal value without discrimination on the basis of sex.⁵² In order to guarantee the effectiveness of this fundamental principle, member states that ratify the Convention have to foster the necessary changes in their national laws or regulations in the legally established machinery for wage determination, and in the collective agreements between employers and workers. Hence, Article 1 (b) specifies that the term equal remuneration refers to rates of remuneration established without discrimination on the ground of sex. Consequently, Member States in its Article 2 (2) are by this principle encouraged to promote and ensure its application to all workers by means of-

- (a) national laws or regulations;
- (b) legally established or recognised machinery for wage determination;
- (c) collective agreements between employers and workers; or
- (d) a combination of these various means.

The Equal Remuneration Convention, 1951 (No. 100)⁵³ was adopted at Geneva, at the 34th International Labour Conference session of the International Labour Organisation on the 29 day of June 1951 and it came into force on 23rd May 1953. The Convention contains 14 articles and was ratified by Nigeria on 8th May 1974.⁵⁴

4.6 Maternity Protection Convention 2000 (No. 183)

This ILO Convention was adopted at Geneva, at the 88th International Labour Conference session of the International Labour Organisation on 15th June, 2000.⁵⁵ In line with its Article 13, it revises the Maternity Protection Convention (Revised), 1952. Maternity Protection is a core issue the ILO has focused on since its inception in 1919.⁵⁶ The first Convention on maternity protection is the Maternity Protection Convention 1919 (No. 3), which provided for a maternity leave period of 12 weeks and is restricted to women in public or private industrial or commercial undertakings. The second Convention is the Maternity Protection Convention (Revised), 1952 (No. 103) which came into force in 1955. This Convention made some improvements on the previous one. For instance, its scope extended to women in non-industrial and agricultural undertakings including domestic workers for wages in private households.⁵⁷

However, the present convention which is considered as the standard for international best practices is the Maternity Protection Convention, 2000 (No. 183). This Convention in its definition of ‘woman,’ in line with Convention No. 103 reaffirms the principle of non-

⁵¹ Ibid, at 758.

⁵² Ibid at 758.

⁵³ 29 June 1952, C100, available at <<https://www.refworld.org/docid/5c6fc21b7.html>> accessed 8 August 2023.

⁵⁴ See Adekola (n 45) for fuller discussion.

⁵⁵ C183- Maternity Protection Convention, 2000 (No. 183) <<https://www.ilo.org>> accessed 6 October 2023.

⁵⁶ IA Olubiyi and OO Olusegun, ‘Maternity Protection of Working Women in Nigeria: A Need for Legislative Review’ (2015) <<https://www.academia.edu>> accessed 6 October 2023.

⁵⁷ Ibid.

discrimination with regard to all women workers.⁵⁸ It broadened its scope of coverage to include women in atypical forms of dependent work, maternity leave, payment/benefits during the leave, health protection, job protection, non-discrimination, and breastfeeding and child care facilities.⁵⁹ It is noteworthy to state that Nigeria has not ratified any of these three ILO maternity protection conventions.

The provisions of the aforementioned international legal instruments promotes the equality of both genders at work and provides that member states should take appropriate measures to eradicate discrimination against women in the field of employment. More so, the Maternity Protection Convention protects the reproduction right of working mothers. The provisions of these Conventions are applicable by the Nigerian Courts in protecting the rights of women when the need arises. The National Industrial Court of Nigeria in its protective stand on the labour rights of female employees in Nigeria against discrimination in the workplace has applied the provisions of regional and international instruments such as the African Charter on Human and Peoples' Rights, the ILO Convention No. 111 and the CEDAW in reaching its decisions in a number of cases.

5. Conclusion/Recommendations

The Nigerian Constitution contains no specific provision protecting the rights of women from 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 gender lines in Nigeria, which have inevitably influenced discrimination against women in the work setting. The 1999 Constitution should be amended to give effect to specific rights of women, which will in turn positively affect the way the working woman is treated in the workplace.

The Labour Act discriminates against working women which is contrary to the provision of section 42 of the Constitution. By virtue of section 55 and 56 of the Act, women are prohibited from night work and underground work. These provisions have only restricted women from having equal employment opportunities like their male counterparts. Women should be at liberty to choose when they want to work and the kind of work they want to be involved in. Therefore, these discriminatory provisions in the guise of protection of working women should be abolished from the Act. The Act itself should be amended to contain provisions that prohibit any kind of discrimination in the workplace, and adequate sanctions for the breach of the maternity rights of women should be provided to serve as sufficient deterrent to employers who violate the law. Lastly, the provisions on maternity protection should be given adequate consideration.

⁵⁸ Laura Addati, 'Extending Maternity Protection to all Women: Trends, Challenges and Opportunities' (2015) 68 (1)*International Social Security Review*, 70-93,<<https://doi.10.1111/issr.12060>>.

⁵⁹ See (n 55) Articles 2, 3, 4, 5, 6, 8 & 10.