A REFLECTION ON THE 1999 NIGERIAN CONSTITUTION, AND DISCRIMINATORY LAWS AGAINST WOMEN'S RIGHTS IN NIGERIA

Ebiemere Osaro[1]

ABSTRACT

Equality as a concept is synonymous with freedom from discrimination and presupposes that every person must be treated equally irrespective of race, gender, colour, ethnicity, religion, disability or other characteristics without discrimination, privilege or bias. In Nigeria, women face challenges that are caused by discriminatory provisions of extant laws at national and sub-national levels and is a situation created by the Nigerian Constitution. This paper focuses on discrimination against women in Nigeria by interrogating the various legal framework such as conventions treaties, charters at the international, regional, national and sub-national levels on discrimination against women. This paper reveals that the situation in Nigeria remains peculiar with respect to discrimination against women, and is a product of Section 43 (3) of the 1999 Nigerian Constitution. This section serves as impairment to possible challenges that would have arisen against these discriminatory provisions under such laws and regulations therefrom. Section 42 (1) of the Constitution provides for freedom from discrimination against every person but sub-section (3) makes this provision unrealisable and ineffective particularly when it relates to women as created by extant laws founded on the authority of this constitutional provision. The paper concludes with suggestions towards correcting this injustice against women in Nigeria.

KEYWORDS: *Charter, Conventions, Constitution, Discrimination, Nigeria, Women*

1. INTRODUCTION

Known that the principle of equality and non-discrimination is one of the fundamental elements of international human rights law. This is because it stands against discrimination on unjustifiable reasons or grounds. Empirical findings review that human rights instruments provides and guarantees the right to freedom from discrimination premised on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other Status[2]

This paper examines discrimination in the context of equal rights of men and women as guaranteed by the 1999 Nigerian Constitution (As Amended) as derived and traceable to the United Nations (UN) actions for the progress of women in the signing of the UN Charter[3] where women in the preamble, the members of the UN reaffirmed their faith. Further to this, is the provision of Article 55 of the Charter that requires States to promote universal respect for, and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion.

[1] BA (Ife), LLB, LLM (Port Harcourt), LLB (Abuja), PhD (NAU) Nigeria, and PhD (Bradford) United Kingdom
[2] UDHR Article 2, ICESCR Article 2 (2), Article 2 2crc, Articles 2&3 ACHPR and Article 3 ACRWC
[3] United Nations Charter of the United Nations, 24 Oct 1945, 1UNTIS XVL

On the above inspiration, a number of international instruments on women's right have been adopted at the level of the UN, and some of these in the form of treaties and convention are, The Convention on the Political Rights of Women (1952)[4], The Convention on the Nationality of Married Women (1957)[5], The Convention on the Consent of Marriage (992)[6], The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)[7] and within African regional level are, African Charter on Human and Peoples' Rights (ACHPR) 1981[8] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)[9].

It is on the strength of the above that one can arguably state that human rights is evidenced by the fact that there is a universal acceptance of the norm of equality hence this paper appraises the applicability of this treaties within the Nigerian legal regime focusing on the Nigerian Constitution and the various national and sub- national laws.

2. FREEDOM, EQUALITY AND NON-DISCRIMINATION

2.1. Freedom

The concept 'freedom' means different things to different people. In the adjudicatory context and to a convicted person having sentenced and served his term of imprisonment, 'freedom' to him means release from imprisonment[10]

In another context, 'freedom' implies the power to make crucial decisions without let or hindrance while others perceive 'freedom' as independence from control and power of another person or the right to private enjoyment of one's life and property[11]

According to Lord Denning, in his presentation under the Hamlyn Lectures Series Titled 'Freedom to Must Be under the Law'[12]. By implication is that, every one freedom is provided and within provision of the law. Therefore, justified freedom must be exercised within the limits of a system of justice that protects the rights and freedom of all people. This emphasised the position of the Human Rights Advocate and Anti-Apartheid Activist, Nelson Mandela in his words, 'to be free is not merely to cast off one's chains but live in a way that respects and enhances the freedom of others'. Which by implication is that freedom is not physical release from confinement or hostage

[4] Convention on the Political Rights of Women, 20 December 1945, A/RES/640(VII).
[5] Convention on the Nationality of Married Women, 11 August 1958, 309 UNTS 65
[6] Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962) of A/EES/1703 A(XVII)
[7] Convention on the Elimination of All Form of Discrimination Against Women (CEDAW) (1979), A/RES/34/180.
[8] African Charter on Human and Peoples' Rights (ACHPR) (1979), OAU DOC. CAB/LEG/673 R 5, ILM58 (1982)
[9] Protocol to the African Charter on Human and Peoples' Rights on Rights of Women in Africa OAU(DOC.CAB/LEG/86.6 Rev. 1 (2003)
[10] Hon Justice Peter Akhime Akhihiero Paper Titled 'Freedom, Equality and Justice for All', Presented at the NBA-Benin Branch Workshop, 11th Dec. 2023, 2
[11] Hon Justice Peter Akhime Akhihiero (n 10).
[12] Hamlyn Lectures: Freedom Under the Law (1949); Hon Justice Peter Akhime Akhihiero (n 10)

but expressed as a right that does not violate the rights of other people within your community. Webster dictionary defined the concept 'freedom' as the absence of necessity, coercion or constraint in one's actions[13]

Gleaning from the above, it is worthwhile to not that justified freedom is not absolute. While one can exercise his freedom as prescribed by law, such as to carry on a chosen business enterprise, this his freedom must be exercised within the limits imposed by the laws that guarantee the protection of human right and the safety of the society at large.

Under Chapter IV of the Constitution of the Federal Republic of Nigeria, by virtue of her being a party state to the Universal Declaration of Human Rights is subject to the Declaration. The Declaration provides for fundamental rights to freedom to personal liberty, right to freedom of thought, conscience and religion, right to freedom to fair hearing, right to freedom of expression and the press, right to freedom of movement, right to freedom from discrimination and right to property ownership. The enforcement of these rights are possible as provided under the Fundamental Right Procedure Rules 2009 that provide an elaborate framework for the enforcement of human rights as contained in the various human rights instruments in force in Nigeria

2.2. Equality and Non-Discrimination

The concept 'equality' from legal perspective is synonymous with freedom from discrimination, which presupposes that everyone must be treated equally under the law regardless of race, gender, colour, authenticity, religion, disability, or other characteristics without any discrimination, privilege or bias. It is a fundamental principle of rule of law as posited by A V Dicey[14], it is a principle of equality that emphasise the need for protecting and treatment of people equally by the law. This was also stated in the Universal Declaration of Human Rights that 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood'[15]. It further goes to provide that 'all are equal before the law and entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination'[16]

In the same vein, the UN Charter provides in its preamble that there is a need to reaffirm faith in fundamental human right, in the dignity and worth of the human persons, in the equal rights of men and women[17]. This formed the basis upon which the bills of rights of many national constitutions are created as derived from the Universal Declaration of Human Rights[18]

[13] Merriam-Webster's Collegiate Dictionary, 12th Edition, 2025
[14] A V Dicey, Introduction to the Study of Rule of Law of the Constitution (1st ed.1885, 8th ed, 1915, London: Macmillan), Part II, Chapter IV
[15] Article 1 UDHR (n 2)
[16] ibid Article 7
[17] Preamble of the UN Charter
[18] G A, Res 217, UNGAOR3rd Sess. Supp. No 127 at 71 UN DOC A/80 (1948), UDHR (n 16)

In Nigeria, the 1999 Constitution[19] provides for right to freedom from discrimination. Ironically, gender inequality forms bulk of the instances and cases on discrimination. Women and illegitimate children are the major victims of inequality and discrimination practices, even in the face of a constitutionally provided section. Some of the national laws also support these discriminatory practices[20] which as could be argued is also founded on the constitution as source and inspiration on which laws were enacted. This is why, it is stated by some people that the road to legal equality in Nigeria begins with the restructuring of its national statutes when their exist provisions in support of discriminatory practices that will and leads to inequality. Some of these discriminatory laws as provided in the 1999 Nigerian Constitution and national laws that shall be discussed in detail hereafter in this paper include, Section 26 (2) of the Constitution[21] that does not allow a female citizen of Nigeria to transmit her nationality to her foreign spouse as permitted by a male citizen to so transmit. Section 42 (3) that validates the prohibition of recruiting a married female citizen and restricted by the Nigerian Police Act[22] amongst other laws.

3. INTERNATIONAL LEGAL FRAMEWORK AGAINST DISCRIMINATION OF WOMEN

3.1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

Prior to this convention, there were conventions that attended predominantly to human right but did not focus on universal discrimination against women by virtue of their sex and mental status, as it was not identified as a violation of human right for curtailment and punishment.

CEDAW as a convention on elimination of all forms of discrimination against women was adopted by the General Assembly of the United Nations with Resolution 34/180 of December 18 1979 and came into force on September 3 1981 in line with the provision of Article 27 (1)

It is one of the fundamental and essential international legal instruments put forward for protection of rights. It is uniquely for women as it applies to all women and of all nationality, legal status, such as marital status making it an international bill of women. The convention as conceived and accepted by 189 party states is the foundation on which the awareness for discrimination against women's rights is built.

Despite the above, a number of states unfortunately made general reservations on some of the substantive articles as provided in the convention upon ratification. This is one of the areas of concerns among other state parties as the reservations could affect the full implementation of the

[19] CFRN, 1999. S. 42
[20] Some of these laws will be discussed later in this paper.
[21] CFRN 1999 (n 19)
[22] CFRN 1999 s. 118 (g)

convention. To note importantly is that the convention provides for reservation[23] but should not be of a nature that impede on the essence of the convention as in 'object and purpose' of the article[24]

For states that considered the general reservations and adopted, they premise on political, legal, and religious reasons which in essence contrary to the Vienna Convention on treaty provisions, as they contradict the objective and the purpose of such a convention[25] that creates for states to make reservation when signing, ratifying, or accepting a treaty. A reservation is incompatible with the treaty's purpose and object if it does not fall under sub-paragraphs (a) or (b)

Under CEDAW, discrimination against women include:

> *… any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field*[26]

A deductive summation from the provision demonstrates that:

1. Discrimination against women generally and not discrimination on the basis of sex include discrimination created by legislations as well as discrimination that are created by practices and customs being *de jure* and *de facto* discrimination respectively. Aside the *de jure* discrimination, CEDAW remains the only international human rights instrument that condemns and stand against cultural and traditional discrimination with regard to gender roles and family relations. It is explicit on civil, political, economic, social and cultural rights of women.
2. The convention advocates end to or abolition of practices against women in areas of life through legitimate measures such as legislations against existing legislations, customs and practices imposed by culture and religious beliefs that relegate and justify discrimination against women[27]
3. The steps of the convention encourage state parties to apply constitutional and legal framework that will guarantee equality, provide remedies and sanctions for private and public conducts and practices that are discriminatory against as well as statutory reforms against discriminatory laws

Also crucial in the provision that established Committee on the Elimination of Discrimination against Women is the responsibility of monitoring the implementation of the convention's provisions by state parties. Article 21 (1) empowers the committee to make 'General Recommendations'. Historically, the committee is the first UN body though, its recommendations

[23] Article 28 para 1 CEDAW
[24] Article 24
[25] Article 19 (c) Vienna Convention on the law of treaties
[26] Article 1 CEDAW
[27] Articles 2 and 5 (a) CEDAW

focus on violence against women and genital mutilation as considered a form of violence against women, and how states parties must take steps through legislations and other measures to prevent such rights violations against women.

Generally, CEDAW remains and represents a critical treaty that target at eliminating all forms of discrimination within the African continent, African nations being party states to this convention. It is on this that the African sentiments in this regard is hereunder examined.

3.2 The African Legal Framework

The basic legal instrument for human rights protection in the Africa region is the African Charter on Human and Peoples' Right (ACHPR) 1981[28]. It sets the framework for the recognition and affirmation of women's right as it provides for non-discrimination on grounds of sex[29], equality before the law[30] and express provision directed at women as it provides that, 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declaration and convention'[31]. Similar provision on right and welfare of the child is created by the African Charter on the Rights and Welfare of the Child (ACRWC)[32] as it unequivocally stressed non-discrimination and equal protection before the law[33] with emphases on state parties to create laws that sets minimum age of marriage for both male and female child at 18 years[34]

With how robust the African Charter provision on non-discrimination is, women in Africa still suffers civil, political, economic, social and cultural right discriminations. It is on this note that the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa came into existence

3.2.1 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women

Owing to the continuous state of abuses faced by women in African through various forms of discrimination that were not eliminated by African Charter on the Rights and Welfare of Child 1990 (ACRWC) that seems not to provide effective protection, the Women Protocol was adopted on the July 11 2003 and came into force in 2005. Women as mentioned in the Protocol includes the girl child[35]. The provisions of the Protocol as intended raises additional attention to the rights of African women under CEDAW and this was stated by Viljeon that *'... the protocol speaks in a clearer voice about issues of particular concern to African women locates CEDAW in African reality ...'*[36]. The stress calls for state parties to make available possible measures of

[28] African Charter on Human and Peoples' Rights, 1981 OAU Doc. CAB/LEG/67/3.Rev
[29] ibid, Article 2
[30] ibid, Article 3
[31] ibid, Article 18 (3)
[32] African Charter on the Rights Welfare of the Child, 1990 (ACRWC), OAU Doc CAB/LEG/24.9/49
[33] ibid, Article 21
[34] ibid
[35] Article 1 (a) Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa.
[36] F Viljeon, *International Human Rights Law in Africa* (2nd Ed) (Oxford, Oxford University Press, 2012) 233

implementation, enforcement of the human rights instrument within the African continent as it reiterates that despite the ratification of the ACHPR as provided in the constitution, women in Africa continue to be victims of discrimination and harmful practices[37]. It uniquely attended to violence against in Article 3, female genital mutilation in Article 5 and the rights of women living with HIV/Aids in Article 14 (1) (d) (e) of the sundry provisions in the protocol. It could be arguably stated that the Protocol as fundamental African regional legal framework and authority compliment the CEDAW on women's rights against discrimination

3.3. Nigerian National Legal Framework

Nigeria is one of the countries within the African continent with law comprising plural normative system as in statute law, customary law and religious law[38]. These laws aside the constitution constitute the basis of discrimination against women as examined hereunder.

3.3.1. The 1999 Nigerian Constitution

The Nigerian Constitution[39] provides in Chapter IV for right to freedom from discrimination in its concrete statement on grounds 'of sex, religion, ethnicity, age or circumstances of birth against any citizen'[40]. This provision is the foundation upon which any act from any person or person, natural or artificial contrary to it can be challenge as breach of fundamental right of the affected person or persons.

3.3.2. Sub-National Legislations

Various states on the strength of the constitutional provision on discrimination have their respective legislations that protects women from discrimination though subordinate to the Nigerian Constitutional provision should there be any inconsistency. It is worth stating that some of the States laws that include: Anambra State Malpractice against Widowers (Prohibition) Law 2005, Anambra State Gender and Equal Opportunities Law, 2007, Lagos State Protection against Domestic Violence Law 2007, Bauchi State Withdrawal of Girls from School for Marriage (Prohibition Law No 17 of 1985). Others are Cross Rivers State Law to Prohibit Girl-Child Marriage and Female Genital Circumcision or Genital Mutilation 2009, and Rivers State Reproductive Health Service Law 3 of 2003 and Rivers State Prohibition of the Curtailment of Women's Right to Share in Family Property Law No 2 of 2022.

3.4. Constitutional Provisions and Discrimination Laws against Women

By the provision of the constitution, section 42[41] prohibits the right of women against discrimination and further provide for right of women to acquire and own property anywhere in

[37] Preamble of Protocol to the African Charter on People' Right of Women Africa
[38] O Ekundayo, An Examination of Laws Discriminating Against Women in Nigeria and The Ways of Addressing It. *University of Ibadan Law Journal*, [2021], Vol 11 (6), 83-93,
[39] CFRN 1999
[40] This supports the Nigerian ratification of CEDAW on 23rd April 1984 and Protocol to the African Charter on Human and Peoples' Rights of Women in African on the 16th December 2004
[41] CFRN 1999 (n 39)

any part of Nigeria[42]. This provision is intended to prohibit laws that are inimical to dignity, interest or welfare of women. Curiously, and contradictory is that same constitution provides for sundry discriminatory provisions against women. Some of these provisions are:

1. **Section 26 (2)[43]**

   This section discriminates against women as it does not allow a Nigerian woman to transmit her Nigerian nationality to a non-Nigerian husband (foreign spouse) just as it allows for a Nigerian man married to a non-Nigerian wife. It is a clear discrimination against women as the situation prevent non-Nigerian men married to Nigerian women and desire Nigerian Citizenship from acquisition of same while it permits non-Nigerian married women to Nigerian men conferment of Nigerian citizenship on them

1. **Section 29 (4)[44]**

   Section 29 (4) of the constitution creates for a woman to be deemed to be of full age upon marriage, thereby giving support to early marriage. The implication is that any marriage female child assumes the status of an adult and therefore recognises and legitimises child marriage. In the express provision of the constitution, it states in section 29 (1) (4) that:

   > Any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation for the purposes of sub-section (1) of this section
   >
   > (a) "full age" means the age eighteen years and
   > (b) any woman who is married shall be deemed to be of full age

   This provision having stated the general meaning and general applicable in sub-section (a) goes further for a discriminatory provision between female and male

2. **Section 42 (3)[45]**

   This section of the constitution provides for the validation and basis for the imposition of discriminatory restrictions with respect to appointment to the Nigerian Police Force as it aids the discriminatory provision of section 118 of the Police Act.

   Section 42 (3) in it combined provision of sub (1) clearly provides thus:

[42] ibid, s.43
[43] ibid
[44] ibid
[45] CFRN 1999

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

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

(b) be accorded expressly by or in the in the practical application of any such executive or administrative action, any privilege advantage that is not accorded to citizen to citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or member of the armed forces of the federation or member of the Nigerian Police force or a member of the Nigerian Police Force or to an office in the service of a body established directly by law in force in Nigeria

This law as it is constitutionally provided, is the foundation upon which the discriminatory law like the Nigerian Police Act places prohibition on enlistment of married women and requirement of putting in writing by Women Police Officers a request provision to marry which does not apply to Male Police Officers

3.4.2. The Nigerian State Laws

In Nigeria, there are laws that discriminate against women and it's argued that the basis of this discrimination includes certain provisions of the constitution and some aspects of the customary law practices, labour Act, criminal code and penal code[46]

1. The Nigerian Labour Act

While it could be argued that, the Nigerian Labour Act provision in Section 55 (1)[47], provides for discrimination for persons in employment as it disenables employers not to employ women for purposes of working on night duties in a public or any agricultural undertaking though, with exception in section 55 (7) for women nurses and women in management positions who are not engaged in manual labour.

[46] E O Ekhator, Women and the Law in Nigeria: A Reappraisal *Journal of International Women Studies*, [2015], 16 (16), 285-292

[47] Nigerian Labour Act, Cap L1, LFN 2004; M O A Ashiru, A Consideration of Nigerian Laws Which are Gender Sensitive: The Female Gender in Focus, *University of Benin Journal of Private and Property Law*, [2010], 1 (1), 90-110

Section 56 (1) further provides that women are precluded from engaging in any underground work in any mine. Also, women are denied the opportunity of being accompanied by their spouse to their place of employment or posting in the service[48]. This provision only apply to women as section 34 (1) of the Act permits men who are employed in the public service in Nigeria to be accompanied to their place of work, and in the provision of the Act, the nature of the permission stated is, 'by such members of his family (not exceeding two wives and such number of his children as are under the age of sixteen years) as he wishes to take with him'

This position is also supported by sub-national civil service rules as it creates for discrimination in the work place. Kano and Kaduna states by their Civil Service Rules provides that:

> Any woman, civil servant, married or unmarried who is about to undergo a course of training of not more than six months duration shall be called upon to enter into an agreement to refund the whole or part of the costs of the course being interrupted on grounds of pregnancy[49]

2. The Nigerian Police Act

As earlier stated, The Nigerian Police Act in Section 127 prevents married women from seeking enlistment in the Nigerian Police Force. By the provision[50], when an unmarried police woman is pregnant, she would be discharged from the police force. She can only be re-instated on approval of the Inspector General of Police (IGP)[51]

Discrimination against women under the Police Act is further strengthened under Regulation 124 of the Act as it provides that, a woman police officer who is interested in getting married must initially apply in writing to the Commissioner of Police for approval[52]. Both by the provisions of the Police Act and Regulation therefrom, makes for clear accentuation of discrimination against women, which same are found under other various statutes with respect to women in other forces[53]

3. Criminal Code

Under the Nigerian Criminal Code, indecent assaults committed against males and females are given different punishments. When such act is committed on a female. It is viewed with lighter concern than when committed on a male gender[54]. Section 353 of the Criminal Code

[48] Ekhator (n 46)
[49]M O Imasogie, 'OIDA' *International Journal of Sustainable Development 02:05* [2010], 11-18
[50] Nigerian Police Act, 2020 s.127
[51] Ekhator, (n 46)
[52] Imosagie, (n 49)
[53] It remains a contention that the Air Force Act reference 'airmen' used for both male and female officers, is discriminatory; Imosagie (n 49); Ekhator (n 51)
[54] M O A Ashiru, A Consideration of Nigerian Law which are Gender Insensitive: The Female Gender in Focus, *University of Benin Journal of Private and Property Law,* [2010] 1 (1), 90-110, SS. 353 and 360 of the Nigerian Criminal Code, LFN, 2004

places a person who unlawfully and indecently assaults a man of a felony and liable to imprisonment for three years whereas, Section 360 of the Criminal Code makes a person who unlawfully and indecently assaults a woman guilty of misdemeanour and is liable to imprisonment for two years

4. Penal Code

Fundamental right of every person is right of an 'individual respect for dignity of his person' and is expressly provided in Section 34 (1) of the Nigerian Constitution. The implications of this are, no one shall be subjected to torture or to inhuman or degrading treatment, no person shall be held in slavery or servitude and no person shall be required to perform forced or compulsory labour.

However, under Section 55 of the Nigerian Penal Code, husbands are permitted to chastise their wives. Sub-section 10 provides that 'nothing is an offence which does not amount to the infliction of grievous harm upon a person and which is done by a husband for the purpose of correcting the wife …'

The Penal Code provision permits a husband to beat his wife as much as such beating does not lead to serious injuries or grievous harm, this is an approval or encouragement of domestic violence against women. The Penal Code in Section 241 defined 'grievous hurt to include emasculation, permanent loss of sight, ability to hear or speak, deprivation of any member or joint, destruction or permanent impairment of the body.

This provision clearly accentuates an example of state approval of brutality against women and to the advantage of the male gender.

4. SUMMARY

This paper examined the Nigerian constitution and laws on discrimination against women and that equality and non-discrimination is one of the basic pillars on which the fundamental elements of international human rights law stands. The paper focused and examined from empirical findings as revealed from the international, national and sub-national human rights instruments, laws and guidelines that provides and guarantees right to freedom from discrimination basically on grounds of sex or gender

On the strength of the fundamental nature of right to equality and non-discrimination as basic right of a person despite sex or gender as the focus of this paper. various international instruments on women's rights as adopted at the level of the UN which include, treaties and conventions[55], and

[55] These are, The Convention on Consent of Marriage (1962), The Convention on the Political Rights of Women (1951), The Convention on the Nationality of Married Women (1957) and The Convention on the Elimination against Women (CEDAW) (1979)

within the African region[56] as well as national[57] and sub-national regimes were explored in this context. Findings from the interrogations as carried out by this research paper revealed that, while the Human Rights Committee (HRC) provides that the right to equal protection of the law in Article 26 of the International Covenant on Civil and Political Rights (1CCPR) place affirmative obligations on signatory state to deal with gender inequalities. Nigeria state as a signatory to this convention and having ratified CEDAW became obligated to address the existing forms of discriminations against women in Nigeria. This paper thus brought to light the constitutional step by the Nigerian state to abrogate discrimination by the provision of Section 42 of the 1999 Constitution that provides:

> (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or particular opinion shall not, by reason only that he is such a person
>
> (a) be subject either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria or other communities, ethnic groups, place of origin, sex, religious or political opinions are not made subject; or
>
> (b) be accorded expressly by or in the practical application of any such executive or administrative action, any privilege advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.
>
> (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
>
> (3) in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or member of the armed forces of the federation or member of the Nigerian Police force or a member of the Nigerian Police Force or to an office in the service of a body established directly by law in force in Nigeria

The express provision of sub-section (3) of the constitution revealed validation, promotion of discrimination against women as it serves as the authority upon which national laws from where sub-national laws, protocols and guideline therefrom, that discriminate against are founded. While there are debates and arguments to the fact that Nigerian state, a signatory to international treaties, and conventions that provides for non-discrimination against women, and such treaties and conventions having been domesticated by ratification, it should and serve as bastion in

[56] African Charter on Human and Peoples' Rights (ACHPR) (1981) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)
[57] CFRN 1999

invalidating some of these state-sanctioned discriminatory practices authorised by law within the Nigerian legal regime[58]

Domestication by ratification of treaties and conventions by the National Assembly as required by the Nigeria Constitution making such provision as created in the instrument(s) a national law(s) or legislation(s), does not give such laws the status of a constitutional provision but Nigerian state law(s) that are subject to the provisions of the constitution on such matter(s) or issue(s). Where such law(s) conflicts with any provision(s) of the constitution, such law(s) shall not stand on grounds of conflicts and inconsistency with the constitutional provision(s)[59].

5. RECOMMENDATIONS

Noted that commitments towards elimination of discrimination against women through international and regional instruments aside the constitutional provision in section 42 (1), sub-section (3) impairs or places restriction on the ability of affected persons to enforce their fundamental rights against discrimination when observed to be or actually violated. This is because there is a direct constitutional provision that encourages and promotes gender-based discrimination.

Addressing this constitutional constraint requires the involvement of the Nigerian legislature and judiciary being arms of government in addition to public awareness campaign programmes aimed at sensitising the citizenry particularly women on their rights against discrimination generally rather than their selective interests on what and which areas of their rights to protect.

It is therefore recommended that concerted and intensive efforts be made towards a thorough and in-depth reformation of the 1999 Nigerian constitution particularly section 26 (2) and 29 (4) that are discriminatory.

It is also recommended that sub-section (3) of section 42 of the constitution be expunged or obliterated thereby removing the impairment to the validity of section 42 (1) of the constitution. This shall empower and confer the challenging authorities' individuals especially women to contest the discriminatory provisions of the various national and sub-national legislations such as the Police Act, Labour Act, Criminal Code, and Penal Code that promotes and encourages discrimination against women both in public and private sector of the Nigerian state.

In addition, there should be more proactive approaches by Non-Governmental Organisations NGOs through the application of the various international and regional instruments to ensure compliance by the Nigerian state to laws that Nigeria is a signatory to. Women should be involved in agitation and creation of greater awareness on every domain of discrimination against women

[58] The Nigerian Appeal Court in the case of *Timothy v Oforka* (2008) NWLR (Pt 1091) held that, no law or custom that stands in the way of our constitution should be allowed to stand no matter the circumstances
[59] CFRN 1999, s. 42 (3)

rather than selective areas such as political and domestic interest that presently constitute the front burner of women agitation as experienced within the Nigerian jurisdiction

6. CONCLUSION

Finally, the judiciary (particularly the Supreme Court of Nigeria) being the 'last hope' of the 'helpless' and 'statutorily discriminated' should attend to and adopt proactive approaches to issues and concerns that are of gender inequalities and disparities. courts adjudicate on issues that concerns discrimination against women with utmost human rights principles and right-based approach in other to sustain the provision of section 42 (1) of the Nigerian constitution despite the impairment provision under sub-section (3) of section 42 of the 1999 Constitution of the Federal Republic of Nigeria.