

# NIGERIAN WOMEN WORKPLACE RIGHTS: THE PRESENT LEGAL REALITY

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## ABSTRACT

Women have been on the receiving end of imbalance in the workplace. These discriminatory factors have limited their full potentials or prevented them from effectively combining being mothers and career women. The existing laws and societal mindset have not in their entirety provided the framework needed for women to excel on the same pedestal as men. In a similar vein, companies or organizational policies have failed to accommodate regulations that would aid the performance of the woman at work. This paper examines the rights of women, the challenges faced by them at work; and the negative impact of such challenges which inadvertently prevent them from enjoying their constitutionally-guaranteed rights. The research was carried out with reliance on both primary and secondary data from legislations, judicial precedents, published articles and research journals. It anchors its conclusion and recommendation on the need for new laws and organizational policies that protect the working Nigerian woman.

Keywords: Discrimination, Gender, Rights, Sexual Harassment, Maternity Protection

## 1. INTRODUCTION

A woman is pre-conditioned from birth to be: the weaker sex; the primary care giver; a helpmate, a second-class citizen in a patriarchal society. The diverse roles foisted on her only serve to underline her disadvantage as a woman. Nigerian women had until few decades ago lived as wives and mothers in a full-time capacity, taking care of the home and their children. The man was traditionally cast in the role of breadwinner.<sup>1</sup> Colonial heritage served to solidify what was already rooted in culture. Many of the jobs were the exclusive preserve of men. The imbalance in the ratio of men to women in paid employment was staggering and even in recent times, the gap is barely closing. In the 2018 report of the World Economic Forum, Nigeria ranked 133 in closing the gender gap among work managers and legislators<sup>2</sup>. This is a drop from its 2017 ranking of 122 out of 144 countries.

This paper explores the challenges of women in paid employment. These challenges range from gender inequality, pay parity, to sexual assault, discrimination as a result of pregnancy, and inadequate maternity leave. It also considers whether existing laws and international treaties have served to impact positively on Nigerian women's rights.

## 2. THE CONCEPT OF WOMEN'S RIGHTS

According to Merriam-Webster Dictionary<sup>3</sup> women's rights refer to the legal, political, and social rights for women equal to those of men. Women's rights simply put are "human rights, for women. These rights include the right to social, economic, medical, and political self-determination, and to equal treatment under the law."<sup>4</sup> Essentially therefore, women's rights draw its validity from fundamental human rights of citizens. Its activists seek empowerment and positive change for women, while encouraging them to make personal choices for their own well being. The concept of women's rights advocates freedom from every sort of discrimination as a result of their gender.<sup>5</sup> The Universal Declaration on Human Rights equally guarantees equality in the rights of both men and women.<sup>6</sup> In 1979,

<sup>1</sup> Akanle O and Ejiade O. (2012) Traditionalism and Household Chores in Ibadan, Nigeria. *International Journal of Sociology of the Family*, 38(2) :203-224

<sup>2</sup> World Economic Forum Global Gender Gap Insight Report 2018 p.27

<sup>3</sup> Retrieved from [www.merriam-webster.com](http://www.merriam-webster.com) on the 7<sup>th</sup> of July, 2019

<sup>4</sup> Retrieved from [www.quora.com](http://www.quora.com) on the 7<sup>th</sup> of July, 2019

<sup>5</sup> Retrieved from [beijing20.unwomen.org](http://beijing20.unwomen.org) on the 7<sup>th</sup> of July, 2019

<sup>6</sup> Ibidem

the General Assembly of the United Nations adopted a Treaty that promotes the rights of women popularly known as CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). CEDAW seeks to put an end to all forms of discrimination against women and among other things, abolish all forms of laws that promote discrimination against women; promote the enactment of laws that protect girls' and women's rights in the various countries of the world and "ensure elimination of all acts of discrimination against women by persons, organisations or enterprises."<sup>7</sup> The Treaty has been ratified by 189 countries<sup>8</sup> with Nigeria ratifying it in 1985.<sup>9</sup> Sadly, the country is yet to exercise its prerogative as provided for under section 12 of the Nigerian Constitution to adopt CEDAW as a local law or better yet make laws that largely if not in totality mirror CEDAW.<sup>10</sup> The closest Nigeria has to prohibiting discrimination against women is contained in Constitution.

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

- a. *Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of any government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or*
- b. *Be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions."*<sup>11</sup>

The Labour Act defines workers as employees who perform manual labour or clerical work while employees are non-workers who perform administrative, executive technical or professional functions.<sup>12</sup> Women fall into either categories.

### 3. NIGERIAN WORKING WOMEN-THE PERENNIAL ISSUES

Working Nigerian women have over the years formidably increased owing to improvement in qualifications and the economic reality that family income needs to be augmented. However, they have had to deal with the consequences of foraging into employment or business by being by-passed for men who are less qualified for the same role.<sup>13</sup> The fundamental challenges encountered by women at work have contributed in compelling them to make the tough choice of having a successful career at all costs or building a home. Women who choose the former are perceived as cold, inhuman who give up what is most important in life to swim in waters exclusively designed for men to excel in. Some of the issues are discussed below:

#### 1. SEXUAL HARASSMENT AT WORK

Many women have at one time or the other faced harassment or assault in the workplace with many suffering in silence. Sexual harassment is defined by CEDAW to include "such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions...It is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."<sup>14</sup>

<sup>7</sup> United Nations Entity for Gender Equality and the Empowerment of Women/CEDAW. Retrieved from [www.un.org](http://www.un.org) on the 4<sup>th</sup> of July, 2019

<sup>8</sup> Retrieved from [www.ua.undp.org](http://www.ua.undp.org) "Six things you need to know about CEDAW (and women's rights) in Ukraine." 30<sup>th</sup> January, 2017

<sup>9</sup> Retrieved from [www.aacoalition.org](http://www.aacoalition.org) Oby Nwankwo 2017 "Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)"

<sup>10</sup> "The Women's Convention in Nigeria" 14<sup>th</sup> October, 2017 Retrieved from [ng.boell.org](http://ng.boell.org) on the 4<sup>th</sup> of July, 2019

<sup>11</sup> Section 42 CFRN 1999

<sup>12</sup> Section 91 of the Labour Act

<sup>13</sup> Lahle Wolfe 25<sup>th</sup> June, 2019 "How Women Overcome Challenges in Business." Retrieved from [www.thebalancecareers.com](http://www.thebalancecareers.com) on the 4<sup>th</sup> of July, 2019.

<sup>14</sup> General Recommendation 19 to the Convention on the Elimination of Discrimination Against Women

The International Labour Organisation<sup>15</sup> states that sexual harassment is a form of violence against women. Sexual harassment covers a wide range of activities. “Therefore, behaviour which may appear relatively innocent (such as joking, innuendoes, flirting and asking someone on a date) to behaviour which is blatantly illegal such as forced fondling, attempted or actual rape and sexual assault) can all constitute conduct of a sexual nature...to qualify as sexual harassment the behaviour must be deliberate and/or repeated.”<sup>16</sup>

There are 3 types of workplace sexual harassment<sup>17</sup>:

- a. Offensive working environment: In this case, unsolicited requests for sexual favours, sexual advances, physical and verbal sexual conduct are exhibited towards the victim. For instance questions about her sex life, comments about clothes and appearance.
- b. Physical abuse: This entails bodily contact inclusive of unwarranted touching, brushing against, caressing or hugging, sexual assault and rape.
- c. Quid pro quo: Your participation in the sexual harassment is considered a condition for any benefit which you would ordinarily be entitled to in the job like promotion, getting employed, etc

As earlier noted, quite a number of sexual harassment complaints are lodged by women<sup>18</sup>. A 2010 study conducted on working Nigerian women showed that a principal source of sexual harassment is the boss.<sup>19</sup> The wave of #MeToo movement which commenced in 2017 in America eventually found its way to Nigeria in 2018, with many victims of sexual harassment opening up on social media about their harassment at work.

### THE INTERVENTION OF RULES AND LAWS ON SEXUAL HARASSMENT

Section 34 of the Constitution provides that “Every person is entitled to respect for the dignity of his person and accordingly- (a) no person shall be subjected to torture or to inhuman or degrading treatment;...” Sexual harassment has the negative impact of violating the victim’s dignity.<sup>20</sup>

The Criminal Laws of Lagos State<sup>21</sup> provides that anyone who sexually harasses is criminally liable to imprisonment for 3 (three) years. This is however applicable only in Lagos and not the entirety of Nigeria. Beyond the aforementioned provision, the country is bereft of a law with a nation-wide reach that criminalises the act.

The National Industrial Court “NIC” is conferred jurisdiction on labour and employment related matters by virtue of the provisions of s.254 of the Constitution as amended by the Third Alteration Act of 2010. The aforementioned section<sup>22</sup> confers exclusive jurisdiction on the court on sexual harassment related issues at the workplace. On the basis of the constitutional provision, the NIC gave A 2016 judgment in favour of the plaintiff in the case of *Pastor (Mrs.) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria & Anor*<sup>23</sup>. According to the plaintiff, she relentlessly suffered from sexual gestures, compliments and obscene talks coupled with demand for sex and indecent marriage proposal all from the second defendant while employed by the first defendant. In its judgment, the court held that the plaintiff’s right to human dignity was violated. Damages in the sum of N5,000,000 (five million naira) was awarded in her favour.

<sup>15</sup> ILO Discrimination (Employment and Occupation) Convention (No.C111)

<sup>16</sup> Excerpts from Webb S.L. (1994) New York Shockwaves: The Global Impact of Sexual Harassment as quoted in Stop Violence Against Women Sexual Harassment. Retrieved from hrlibrary.umn.edu on the 4<sup>th</sup> of July, 2019

<sup>17</sup> How to handle Sexual Harassment at Work in Nigeria 3<sup>rd</sup> July, 2019 Retrieved from lawpadi.com on the 7<sup>th</sup> of July, 2019.

<sup>18</sup> Noah Y. (2010) Experience of Sexual Harassment at Work by Female Employees in a Nigerian Work Environment J Hum Ecol, 30(3):179-186 (2010) at p. 181

<sup>19</sup> Ibidem at p. 185

<sup>20</sup> Sexual harassment in the workplace/Turning the tables: ending sexual harassment at work 27<sup>th</sup> March, 2018 Article retrieved from [www.equalityhumanrights.com](http://www.equalityhumanrights.com) on the 7<sup>th</sup> of July, 2019

<sup>21</sup> Section 262

<sup>22</sup> Section 254 (c) (1) (g)

<sup>23</sup> Suit No NICN/LA/673/2013

The Labour Act is silent in respect of provisions on sexual harassment. This downplays the significance companies, businesses and organisations tend to attach to the ubiquitous act.

## 2. PREGNANCY DISCRIMINATION/MATERNITY PROTECTION

Nature designed the woman to be the pregnant partner, with the instinctive enduring ability to carry a child to term. This natural development is socially sanctioned by society. However, the cons of it are borne exclusively by the woman. Equality of the genders simply emphasizes that the woman has the right to enjoy the same rights enjoyed by a man. It is for instance, a woman's right to choose to be pregnant and work simultaneously. She also has the right to maternity leave. According to Mahmoud,<sup>24</sup> women have the fundamental human right of protection while pregnant and at childbirth. The International Labour Organisation, is concerned with providing the maternity protection of maternity employees in any organisation. Some of elements to maternity protection include<sup>25</sup>:

- a. Protecting the health of pregnant and breastfeeding women and their children from workplace risks;
- b. Protecting from work discrimination and dismissal;
- c. Medical care;
- d. Maternity leave;
- e. Cash benefits to help the mother support herself and the child while on leave;
- f. Breastfeeding on return from work.

Despite the stance of the ILO and its conventions on Maternity protection, women are still discriminated against at work on account of their being pregnant. There are companies with policies that prohibit pregnancy for a certain number of years after the woman commences work. Those who fail to comply are sacked or penalized.<sup>26</sup> Some organisations are reluctant to employ pregnant women. Unfortunately, the existing law does not provide protection for these women. The Labour Act does not have comprehensive provisions in respect of protection of pregnant women. It only addresses issues of the number of weeks a woman on maternity leave is entitled to.<sup>27</sup> It also states that nursing mothers are to be entitled to 1 hour of breast feeding per day while at work. *Section 54(4)* prohibits the dismissal of a woman from maternity leave as a result of her absence from work. While it is laudable that certain employers grant more than the 12 weeks leave stipulated in the Labour Act, there are many other organisations that merely grant 6 weeks leave.

The ILO Maternity Protection Convention 2000 (No 183)<sup>28</sup> being the third in a number of maternity protection conventions provides that women are entitled to 14 weeks maternity leave. This underlines the fact that Nigeria's law is the minimum standard in respect of maternity leave. Owing to the fact that a woman is under risk when pregnant and even during and after childbirth, it behoves on government to provide a more comprehensive legal framework to protect women who pass through this phase. Failure to guarantee such protection usually leads to women resigning from such jobs.<sup>29</sup> Laudably, Lagos State civil servants are entitled to 6 months maternity leave with the fathers equally entitled to 10 days paternity leave.<sup>30</sup> The Kaduna State government recently announced that women in the state will start enjoying 6 months leave. Presently, federal civil servants are entitled 4 months leave to be taken not less than 4

<sup>24</sup> Mahmoud E.F. (2006) Human Rights Aspect of Safe Motherhood Best Practice & Research .20 Clinical Obstetrics and Gynaecology 413 (2006) cited in Olubiyi I.A. Olusegun O.O. Maternity Protection of Working Women in Nigeria: A Need for Legislative Review (2015) Benson Idahosa University Law Journal, Benin City Vol., No.1. pages 381-409

<sup>25</sup> International Labour Organisation: Maternity protection Retrieved from [www.ilo.org](http://www.ilo.org) on the 7<sup>th</sup> of July, 2019

<sup>26</sup> Maternity Leave and the Nigerian Labour Law 2016 Retrieved from [www.naijalegaltalkng.com](http://www.naijalegaltalkng.com) on the 7<sup>th</sup> of July, 2019

<sup>27</sup> Section 54 provides the woman is entitled to 12 weeks maternity leave.

<sup>28</sup> This Convention has not been ratified by Nigeria.

<sup>29</sup> Olubiyi & Olusegin p.12

<sup>30</sup> This practice commenced in 2014.

weeks before the anticipated due date.<sup>31</sup> The Kaduna state government recently joined its Lagos State counterpart to grant mothers 6 months maternity leave.<sup>32</sup>

The United States of America has the Pregnancy Discrimination Act of 1978 which addresses incidents where the woman is treated differently because she has had a child, or is breastfeeding or is dealing with a condition that arose as a result of having been pregnant or given birth.

### 3. ON/OFF SITE CRECHE FACILITIES

Nothing in the Labour Act mandates an employer to provide a crèche for a nursing mother to be able to quickly access her child and his or her peculiar needs when they arise, particularly during work. However, the reality is that nursing mothers, while given the allowance to breastfeed their babies for an average of 30 minutes twice in a day, they are challenged if the crèche facility is far from their work place. This contributes to the hardship already encountered by them. Many of them deal with this issue by weaning their children off breast milk contrary to the 6 months exclusive breast milk recommended by the World Health Organisation. Others choose to battle with the tedium of rushing between a far flung crèche and their work place. This tends to pile up the amount of stress women are subjected to everyday. Inadvertently, their productivity level will be grossly impaired. Very few employers have crèche facilities on the same premises as the workplace.

### 4. PAY PARITY OR LACK OF IT

A woman is entitled to equal pay with her male counterpart on the same cadre. Inequality in wages is an act of discrimination. One of the challenges of being a working woman is the tendency to be underpaid as compared to males. This was a generic issue in America until the Equal Pay Act of 1963. The purpose of the Act is to eliminate unequal wages as a result of gender discrimination. Unequal pay was rooted in American employment policies with women earning mere 77 cents for every dollar a man earned.<sup>33</sup> In 2009, the *Lily Ledbetter Fair Pay Restoration Act* was signed into law by President Obama.<sup>34</sup>

*Section 17(3)(e)* of the Nigerian Constitution provides that “*The State shall direct its policy towards ensuring there is equal pay for equal work without discrimination on account of sex, or any other ground whatsoever.*”<sup>35</sup> Policies and laws on equal wages are therefore the responsibility of government. Presently, there is no law on equal wages though a bill on same has been at the National Assembly since 2008.<sup>36</sup> Of note also is the Gender and Equal Opportunities Bill which the Senate refused to pass in 2016. Though more women are working as compared to before, many of the management cadre positions are occupied by men, thereby causing a disparity in wages.<sup>37</sup> Seemingly, in Nigeria, salaries are paid depending the employee’s level or position in the civil service or even in the private establishment.

### 4. CONCLUSION AND RECOMMENDATION

The disparities between the lives of a working male and female have been reiterated time and time again by the challenges peculiar to women. While it has generated enough discourse, it is high time government addressed the concerns of sexual harassment, unequal pay maternity protection and other social issues encountered by women.

1. Legislations should be enacted and bills such as the Equal Opportunities Bill be passed into law to promote the rights of women.

<sup>31</sup> The Federal Civil Service Rules Federal Republic of Nigeria Public Service Rules (Corrected Version) 2008, Rule 100218

<sup>32</sup> This announcement was made on the 29<sup>th</sup> May, 2019 inauguration of Governor El-Rufai.

<sup>33</sup> Retrieved from [www.eeoc.gov](http://www.eeoc.gov) on the 7<sup>th</sup> of July, 2019

<sup>34</sup> The Act overturned the position of the Supreme Court where there was restriction on the period of time for filing wages compensation discrimination complaints.

<sup>35</sup> Section 6(6)(c) of the Constitution limits the judicial powers of the courts from hearing cases in respect of the justiciability or otherwise of the provisions on the Fundamental Objectives and Directive Principles of State Policy.

<sup>36</sup> Labour Standards Bill

<sup>37</sup> The National Bureau of Statistics using statistics collected between 2010-2015 reported that 65.3% of top positions are occupied by men in comparison to 34.7% occupied by women. Information retrieved from [www.mysalaryscale.com](http://www.mysalaryscale.com) on 4<sup>th</sup> July, 2019

2. Nigeria should exercise its role as provided under s.12 of the Constitution by adopting the CEDAW Convention to improve the lives of women.
3. Organisations should develop and evolve policies on sexual harassment and other forms of sexual violence against women in order to protect the females and to guarantee a secure working environment free of predators.
4. Companies and institutions should make provision for on-site chreche/breastfeeding facilities to assist women nurse their children. Healthy mothers and babies translate into efficiency at work.
5. Existing laws such as the *Labour Act* should be amended to take into cognizance the realities of the day.

Fines should be reviewed to reflect the current economic changes of the country