

A LEGAL ANALYSIS OF GENDER DISCRIMINATION AT THE NIGERIAN AND SOUTH AFRICAN WORKPLACE

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Abstract

The issue of workplace discrimination based on gender is contentious in countries like Nigeria and South Africa, with many authors questioning the status quo that seems to favour a particular gender. There have also been arguments on the legal regime and anti-discriminatory laws best suited to address the observed gender inequality in Nigeria and South Africa. Thus, this article examines the adequacy of the laws promoting gender equality at the workplace in Nigeria and South Africa. The article adopts qualitative method to analyze both the Nigerian and South African anti-discriminatory laws, especially as it relates to achieving gender equality in the workplace. The article finds that the South African statutes on gender equality is more robust than the Nigerian statutes. South Africa has also developed institutions, mechanisms and policies to administer these laws. Consequently, the article concludes that there is a need to tighten Nigerian laws on gender equality by developing strong laws and institutions like the South African system in order to deliver equality at the Nigerian workplace. Further, this article recommends that the adoption of affirmative action in Nigeria should be done with caution in order not to compromise merit.

Keywords: Gender, inequality, discrimination, workplace, law, Nigeria, South Africa

Introduction

It is trite that gender and sex are intertwined and are used interchangeably by laymen and researchers alike, which indicates widespread misunderstanding of the definitional boundaries (Johnson & Repta, 2012; Angus, 2012; Pryzgoda & Chrisler, 2000). Sex usually refers to the biological aspects of being male and female, while gender is the characteristics and role assigned to men and women which are socially, rather than biologically determined (McLeod, 2014; Pryzgoda & Chrisler, 2000; UNESCO, 2000). Gender is a “multidimensional construct that refers to the assortment of socially constructed roles and relationships, personality traits, attitudes, behaviours, values, relative power, and influence that society differentially ascribes to men and women” (Johnson, 2014, p. 2214). Gender roles are influenced by systems of social differentiation such as age, class, political status, race, physical and mental disability (UNESCO, 2019). Gender is vital in social analysis, because, it reveals the social mode of construction of subordination or domination of a particular sex and how such subordination or domination can be reformed or terminated (UNESCO, 2019; Johnson & Repta, 2012).

Discrimination literarily refers to unfavourable treatment meted on a person or particular group of people (Cambridge Dictionary, 2019; Pokharell, 2008). Discrimination at the workplace was defined as “any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 No. 111). Gender discrimination at the workplace is therefore treating a person less favourably at work due to his or her sex.

Discrimination is classified as direct and indirect. Direct discrimination occurs when rules and practices give preference or exclude certain persons or group solely on the basis of their possession or non-possession of certain attributes (ILO, 2008). For instance, if a night club allows women to enter free but charge men or if an advertised post for managerial position stated that only men are eligible to apply. Indirect discrimination arises when certain criteria are introduced which are not particularly necessary in executing the job, but such criteria place a certain group of applicants at a disadvantage (Jonker, 2015; ILO, 2008). For instance, a criterion that all applicants for a job must be over 6 feet tall definitely disqualifies a higher proportion of the female than the male. Employers may be allowed by the law to discriminate indirectly if good reasons could be advanced for permitting such conditions. However, such conditions must be necessary for the proper execution of the job. These conditions or criteria are known as Bona Fide Occupational Qualifications (“BFOQ”). For instance, an advert prescribing that a bodyguard to a famous musician must be male and above 6 feet may be considered a BFOQ and not discriminatory.

Gender inequality is “gender difference translated into hierarchical power relations in which one gender is privileged,” or discrepancies in the status of men and women (Lorber, 2010, p. 1; Bender, 1989, p. 949). Gender equality refers to the equal participation of women and men in different aspects of life such as the labour market, economic system, educational system, social life and so on (Abendroth, 2014). There is a long history of gender inequality virtually in all spheres of life, such as access to education, voting rights, and others, but it is most pronounced at the workplace (Verniers & Vala, 2018; Dilli, Carmichael & Rijpma, 2019; Kangiwa, 2015; Segalo, 2015; Fasina, 2012; Anyanwu & Augustine, 2012; Jacobsen, 2011; Esteve-Volart, 2004; Bobbitt-Zeher, 2011; Bygren & Gähler, 2007). The quest to ensure gender equality at the workplace is currently one of the most important development challenges facing African countries because the exclusion of a particular gender in employment impacts negatively on sustainable growth and poverty reduction. (Anyanwu and Augustine, 2012; Odozi, 2012).

Gender inequality is the most prevalent form of social inequity and women are more affected than men (Adeniyi-Ogunyankin, 2014; Klingorová & Havlíček, 2015; Bobbitt-Zeher, 2011; Lorber, 2010). However, after several decades of agitations by human rights and feminist activists, women have gained far-ranging legal rights hitherto unknown in the previous centuries, such as the right to work and right to equal pay (Dilli, Carmichael & Rijpma, 2019). Thus, women participation in paid employment has improved over the years in South Africa and Nigeria, but there are still many subtle and blatant discrimination against women at the workplace (SAHRC, 2018; McGinn & Oh, 2017; Iweagu, Denis, Chukwudi, & Andenyangtso, 2015). Women’s disadvantage at the workplace is a function of subjection to discriminatory laws in relation to access to family or communal land, property ownership, succession, and these laws adversely impact on their economic opportunity, welfare and autonomy (Ajala, 2017). Further structural barriers include the inherent women’s responsibilities for the elderly and child care, stereotyping and so on (Fredman, 2013).

There are empirical studies by some scholars that shows that payment differentials and promotion at the workplace may be a function of the choices that women made and not due to discrimination in favour of men (Bolotnyy & Emanuel, 2018; Phelan, 2018; Fredman, 2006; Burgess, Burke, & Oberklaid, 2006; World Bank, 2013). Pay differentials still exist between men and women doing similar jobs, but the pay differential is narrower than it was decades ago; nevertheless, there should be legal intervention to address it (Ortiz-Ospina & Roser, 2018; Bacolod & Blum, 2010; Fredman, 2006). One cannot overlook the fact that sometimes women’s choice rather than discrimination contributes to these payment differentials and perceived discrimination. Certain reasons, listed

below, other than discrimination were cited for this (ILO, 2018). The reasons include first, dropping out of work to raise children lowers women's income statistics and many women may not rejoin work after child rearing. Second, most women refuse to choose the Type-A (Workaholic) behaviour often identified by psychologists as necessary to rise to the top of career ladder (Burgess, Burke, & Oberklaid, 2006). Third, women gravitate towards less risky job, indoor, regular (not involving overnight shifts) and more often avoid physical jobs (ILO, 2018). For instance, major airlines have made significant efforts without much success to hire women in high paying jobs such as airline baggage handlers (Animashaun, 2009). Fourth, women often choose advanced degrees in humanities where they will be eligible for jobs such as therapists or teachers rather than pursuing advanced degrees in science, technology, engineering and business, which attracts higher remuneration (Gu, 2018). Nonetheless, there is a need to redress the noxious laws and practices which impede career progression of the women at the workplace. Sometimes, however, men are treated less favourable than women solely on the account of their gender (Stamarski & Hing, 2015; Jacobsen, 2011; Lorber, 2010). For instance, in most societies, men are disproportionately represented than women in dangerous and arduous work or occupations such as combat zone work, policing and firefighting (Lorber, 2010).

Most scholars and policy makers agree that discrimination at the workplace is skewed against women more than men, thus the United Nations (UN) has implemented several measures to bring attention to and provide antidotes against discrimination against women. Some of the measures include the adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. CEDAW prohibits gender based discrimination in all ramifications. Other measures include the UN sponsored Fourth World Conference on Women held in Beijing, China in 1995 with the theme "Action for Equality, Development and Peace". The Beijing Conference adopted the Beijing Declaration and Platform for Action on 15 September 1995. This Declaration commits participants of the conference to advancing the goals of development, peace and equality for women globally. It further requires participants at the Conference to make concrete efforts towards addressing the constraints and obstacles hindering the advancement and empowerment of women all over the world. There were also the universal Millennium Declaration (MD) which committed signatories to Millennium Development Goals (MDGs), which usually include provisions for promotion of gender equality, apart from similar regional declarations. Nigeria and South Africa are both signatories to the above international statutes and instruments, however, there is a discrepancy in the domestication of these treaties in Nigeria and South Africa (SAHRC Report, 2018; Olomola, 2008; CEDAW Report Nigeria, 2003).

The need for gender equality in the Nigerian and South African employment market, like most African countries, is significant for two reasons. First, working women's contribution to household welfare reduces household poverty; and enhances the working women's involvement in family decision making (Anyanwu and Augustine, 2012). Second, gender equality widens the tax base and boost the national economy of the countries under study. This article thus analyses some of the Nigerian laws and policies, which violate the doctrine of gender equality at the workplace in Nigeria. This article examines the adequacy of the laws and policies formulated to achieve gender equality at the Nigerian workplace. The article also examines South African gender based anti-discriminatory legislation and workplace gender equality mechanisms. The article extracts some lessons from the South African anti-discrimination legal mechanism and advocates for the adoption of similar statutes in Nigeria.

Theoretical concept of equality in the context of discrimination in Nigeria and South Africa

The right to equality is universally recognized and enshrined in both the Nigerian and the South African Constitutions (Fredman, 2016; section 42 of Nigerian Constitution, 1999; section 9 of the South African Constitution, 1996). Thus, equality and discrimination are like two sides of a coin (Odeku & Animashaun, 2012; Ghanea, 2011; MacNaughton, 2009; Goldstone, 2006). The absence of equality reflects the presence of discrimination and vice versa (Fredman, 2016; Odeku & Animashaun, 2012; Bielefeldt, 2012). The antidote to gender discrimination in many jurisdiction is to institute equal treatment principle. However, it was posited that equal treatment of different gender might lead to unsatisfactory outcome (Fredman, 2012). Thus, the idea of disparate impact discrimination was advanced to address the situation. This idea stated that equal treatment will be held to be discriminatory if it has a disproportionate effect on a particular gender, unless it can be shown that discrimination in favour of a particular gender is crucial in executing the extant job properly (Fredman, 2012).

Two approaches could be adopted to promote gender equality in the workplace, namely, formal and substantive (Pretorius, Klinck & Ngweni, 2001). The formal approach guarantees equal opportunity for everyone in the workplace. This is done to ensure neutrality and avoid any form of prejudice. Formal gender equality approach refers to laws and policies that are gender neutral, which treat everyone in the same manner. Such laws and policies may in fact cement existing gender inequalities since they do not seek to change an unequal status quo (Osiki, 2014). The anti-discrimination provisions under the formal gender equality approach may be inadequately in catering for the vulnerable groups, which may include women, persons living with disability and members of an ethnic minority (Osiki, 2014; Barnard & Hepple, 2000).

In societies where there are structural or systemic inequalities and unequal power relationships like South Africa, the formal approach is inadequate because the prejudice against women are left unaddressed (*President of the Republic of South Africa v Hugo*, 1997). Formal equality may be useful in addressing cases of direct discrimination based on gender, but it is incapable of dealing with cases of indirect discrimination and structural inequalities inherited from the apartheid era (SAHRC, 2018). As a result of the peculiar situations of members of the vulnerable and disadvantaged groups, the substantive approach is used to ensure equality for members of these groups. Substantive approach involves legal or fair discrimination. It means treating some persons more favourably than others because they are vulnerable and had suffered discrimination in the past. This substantive equality could be affirmative action, which is also known as reverse discrimination (Schwartz, 2009). Affirmative action is therefore defined, as measures necessary “to diminish or eliminate conditions which cause or help to perpetuate discrimination” (Adejogbe & Adejogbe, 2017, p. 34). The main aim of affirmative action is to allow groups that are historically disadvantaged within the society to benefit from discriminatory acts which would bridge the gap between them and the hitherto favoured groups. Fredman however sounded a caution, that affirmative action provisions should be tightly controlled; and that it should be used only if candidates are of equal merit citing the application of the provisions in the European Union (Article 119 of the Treaty of Rome and Council Directive 75/117/EEC; Fredman, 2013; *Georg Badeck and others*, 2000). Having laid the legal foundation of the discrimination and equality in the workplace above, the article now examines the adequacy of legal framework protecting gender equality at work in Nigeria.

The legal framework safeguarding gender equality in the Nigerian workplace

The legal framework guiding employment relationship in Nigeria includes the Nigerian Constitution, 1999 and the Labour Act, 2004. Section 17(2) of the Nigerian Constitution, 1999, provides that every citizen shall have equal rights, obligations and opportunities under the law. Chapter IV of the Nigerian Constitution, 1999, (sections 33 to 44) provides for different fundamental human rights. The rights include the right to life, dignity, personal liberty, private and family life, to freedom from discrimination, and the right to freedom of expression and the press, among other rights.

Section 42 of the Nigerian Constitution, 1999 specifically prohibits discrimination on the grounds of sex, among other grounds (see also section 17 of the Nigerian Constitution, 1999). However, it was evident by statistics that there is gender inequality at the Nigerian workplace and that women seems to be less represented in certain professions, especially in relations to decision making (Adejugbe & Adejugbe, Adeniyi-Ogunyankin, 2014; Fasina, 2012; Anyanwu & Augustine, 2012; Odozi, 2012; Animashaun, 2009). The Federal Government of Nigeria in order to bridge the gender inequality gap and promote gender equality in Nigeria created the National Women Development Centre, the Federal Ministry of Women Affairs and Social Development, and the National Gender Policy (Kangiwa, 2015). Specific economic programmes meant to enhance women's financial independence and participation at the workplace were also inaugurated by the Federal government of Nigeria. Some of the programmes are the Better Life for Rural Women's Programme, the Family Support Programme and the Family Economic Advancement Programme (Kangiwa, 2015).

In addition, all political parties in Nigeria have waived nomination fees for all female aspirants in order to improve women's participation in party politics and decision making, while the male aspirants running for the same office are required to pay staggering fees (The National Democratic Institute for International Affairs and The Carter Center, 2003). For instance, all male aspirants who contested in the party primaries of the All Progressives Congress (a political party in Nigeria) in the 2019 presidential and governorship elections paid nomination fees of N45million (\$ 125,000) and N22.5million (\$ 62,500) respectively (Odebode & Alechenu, 2018). The female aspirants however collected the nomination forms for free. All political parties in Nigeria create positions of women leaders at national, state and local levels in Nigeria to cater for women's special needs (The National Democratic Institute for International Affairs and The Carter Center, 2003). These gestures are meant to encourage women's participation in politics and bridge the gender inequality gap at the workplace and in decision making.

The affirmative action policy in Nigeria is known as federal character. It is recognised under the 1999 constitution (section 14 of the Nigerian Constitution of 1999). Federal character is an affirmative action aimed at promoting the representation of all ethnic groups in Nigerian public sector, but gender based discrimination issues are not included. Thus, issues of admission, education, recruitment, promotion and appointment in the Nigerian public sector are based on the principle of federal character, usually to the detriment of merit or competence (Akande, 2000). Pursuant to section 14 of Nigerian Constitution, 1999, the Federal Character Commission was established by the Federal Character Commission (Establishment) Act, 2004. The Act provides, amongst other things, for equitable representation of states in national institutions, public enterprises and organizations. The main preoccupation of the Act is on equitable representation of the component states forming the Nigerian federation, it is silent on gender inequality. I submit that the Federal Character Commission Act should be amended to take care of gender equality, without compromising the minimum qualification that the appointed officials must possess.

Different states in Nigeria have also enacted laws and made policies meant to enhance gender equality in their respective states. We shall only enumerate those that have direct bearing on employment. These include Anambra State Gender and Equal Opportunities Law, 2007, and Imo State Gender and Equal Opportunities Law, No. 7 of 2007. Further, there are Ministry of Women Affairs at the state level and a supervisory councilor responsible for women affairs at the local government level. The functions of these offices include stimulating action to promote civic, political, social and economic participation of women; coordinating and monitoring women's programmes; and providing technical and financial support to women non-governmental organizations (FGN, 2008). In spite of the above stated statutory provisions, enacted towards the promotion of gender equality in Nigeria, there are still some outdated employment law provisions which are discriminatory. Such law includes section 118 of the Nigeria Police Act, 2004 which provides that a woman must be unmarried in order to be eligible for enlistment in the Nigerian Police Force. There are however no similar provision for the unmarried male counterpart under the same Police Act and there is nothing to show that being an unmarried woman is a BFOQ for being enlisted in the police. Similarly, section 124 of the Nigeria Police Act, 2004 provides that a woman police officer, contemplating marriage, must apply to her command's Commissioner of Police with the fiancée's bio data. It is the prerogative of the Commissioner of Police to grant permission to the said officer, if the fiancée is adjudged to be of good character. Under the same Act, a police officer who is pregnant outside wedlock shall be discharged from Police Force and shall not be re-enlisted, except with the approval of the Inspector General of Police (Section 127 of the Nigeria Police Act, 2004). Sections 121 and 122 of the Nigeria Police Act, 2004 provides that women police should be employed only in clerical, office orderly and subsidiary duties. Likewise, under section 123 of the Nigeria Police Act, 2004 a woman police officer shall not be called upon to practice with arms or to take part in any drill or riot exercise. The enumerated provisions of the Police Act, 2004, are discriminatory against women and should be expunged from Nigerian statutes.

Similarly, certain sections of the Labour Act, 2004 prohibits women from specified occupation or vocation. Section 55(1) of the Labour Act, 2004 forbids a woman from being employed on night work in any industrial or agricultural undertaking, except she is not ordinarily engaged in manual labour, but employed as a nurse or holding a responsible position in management (Section 55 (2) of Labour Act, 2004). Section 56 (1) of the Labour Act, 2004 exclude women from working underground in any mine, subject to the exception granted under section 56 (2) of the Labour Act. In addition, section 57 of the Labour Act, 2004 empowers the Minister of Labour to make further regulations restricting the employment of women in specified industries, undertakings or vocation. Section 58 (2) of the Labour Act, 2004 provides that any person who employs a woman in contravention of sections 55 (1) or 56 (1) shall be guilty of an offence and on conviction shall be liable to a fine or to a term of imprisonment or both. I hold that these are outdated provisions that should have been expunged from Nigerian Employment Law. Furthermore, it is likely that these provisions would be set aside in the face of recent decisions by the Supreme Court and other courts of record, where the courts have nullified certain laws and practices that discriminate against women (*Lois Chituru Ukeje vs Mrs Gladys Ada Ukeje*, 2014; *Onyibor Anekwe and Anor vs Mrs. Maria Nweke*, 2014; *Women Empowerment and Legal Aid Initiative (WELA) vs Attorney General of the Federation, Asika vs Atuanya*, 2008; *Dr. Priye Iyalla-Amadi vs Director-General of the Nigeria Immigration Service and Nigerian Immigration Service (NIS) & Others*, 2008).

In addition, some courts such as the Area Courts and the Sharia Court of Appeal must be manned by men only and the provisions of the Nigerian Constitution, 1999 is appropriately couched to

reflect this (sections 261 (3)(a) &(b), 275 (3)(a) &(b). Similarly, section 26(2)(a) of the Nigerian Constitution, 1999 provides that women married to Nigerian men could acquire citizenship by registration, which is an easier way of acquiring citizenship than by naturalization, which is opened to foreign men married to Nigerian women. I opine that these provisions of the Nigerian Constitution, 1999, are unfair gender discrimination. The difference in access to citizenship between foreigners married to Nigerians of different sexes impacts negatively on the economic life and employment rights of foreign men married to Nigerian women. It is my submission that this provision of the Nigerian Constitution, 1999 should be amended to make for gender equality, whereby anyone married to Nigerian nationals would acquire citizenship in the same manner. The next section examines the South African legal framework on gender equality, with the intention to extract some lessons from this jurisdiction.

South African laws and policy framework on gender equality

South African Constitution provides generally for de jure equality, specifying that there must be no discrimination on all grounds, including gender, unless this is done according to the law (section 9 of the South African Constitution, 1996). Discrimination may be lawful in South Africa if it is in line with affirmative action. The extensive and liberal approach of the South African Constitution, 1996 was captured in two major statutes, namely the Employment Equity Act, 1998 (EEA) and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA). The EEA prohibits discrimination on racial, gender, sex, pregnancy, ethnic or social origin, sexual orientation, colour, age, marital status, family responsibility, disability, religion, HIV status, conscience, language, political opinion, culture, belief and birth, at the workplace (sections 5 & 6 of EEA). Thus, unfair gender-based discrimination is unlawful in South Africa (Steyn and Jackson, 2015). The EEA with particular reference to gender discrimination provides that, unfair discrimination under this heading may refer to any distinction, exclusion or restriction made on the basis of sex, including pregnancy, marital status, domestic or family responsibilities which are aimed at nullifying the recognition, enjoyment or exercise for women or men (Steyn and Jackson, 2015). However, discrimination under the South African law can be fair, when the discrimination occurs as a result of affirmative action or discrimination based on productivity, or when the inherent requirements of a job or a situation demands so (sections 6 (2), 8, & 15 of EEA). Affirmative action and specific job requirements therefore constitute legally valid reasons for discrimination (Steyn and Jackson, 2015; section 6 (2), & 15 of EEA). Also the Broad Based Black Economic Empowerment Act 53 of 2003 (B-BBEE Act) as amended, provides for gender equality, especially amongst the disadvantaged gender in south Africa (sections 1 and 2(d) B-BBEE Act).

PEPUDA, 2000 is the national legislation mandated by section 9(4) of the South African Constitution, 1996, thus, enjoys special constitutional status. PEPUDA deals with both non-employment and employment related discrimination, unlike the EEA that deals only with employment related discrimination (section 1, PEPUDA). Section 8 of PEPUDA stipulates that no person may be unfairly discriminated against on the ground of gender, and goes on to list various prohibited forms of gender-based discrimination, including traditional, customary or religious practices, which impairs the dignity of women and undermines equality between women and men. The Equality Court was established in terms of PEPUDA to provide legal protection and recourse when violations of the right to equality occur. The Equality Courts hear matters regarding unfair discrimination on any of the prohibited grounds stipulated in PEPUDA (Sections 10 and 11 of PEPUDA; SAHRC, 2018). In the light of this, the courts established under the South African Constitution, 1996 are empowered to declare illegal customary laws which impede gender equality (*Bhe vs Khayelitsa Magistrate*, 2005). Further, in contradistinction to the position under the

Nigerian law, male and female foreigners married to South Africans have equal right to citizenship (section 5 of the South African Citizenship Act, no. 88 of 1995)

The Commission on Gender Equality Act, no. 39 of 1996 was an Act of the Parliament adopted to monitor and evaluate policies and practices of all organs of the state and private enterprises in promoting gender equality and makes appropriate recommendations on gender equality to the parliament. Another function of this Act is to develop, conduct or manage educational programmes to foster public understanding of matters relating to the promotion of gender equality (Sinden, 2017).

Other statutes enacted to promote gender equality include and Basic Conditions of Employment Act, no. 75 of 1997; Occupational Health & Safety Act, no. 85 of 1993; Labour Relations Act, no. 66 of 1995; Unemployment Insurance Act, no. 63 of 2001.

There are provision for independent statutory bodies empowered to foster gender equality, the bodies include, *inter alia*, the Commission on Gender Equality; the Public Service Commission; the Public Protector; the Youth Commission; the Human Rights Commission; the Land Commission and the South African Law Commission. The Commission on Gender Equality is the body primarily charged with the role of promoting the empowerment of women and gender equality. Other statutory bodies listed above only complement the work of the Commission on Gender Equality (SAHRC, 2018; The Office on the Status of Women, 2014). The regional and local interventions offices such as the Office on the Status of Women (in the Provincial Premier's office) charged with the responsibility of developing a provincial gender policy, action plan, and coordinating with the provincial and national stakeholders are worthy of note. Other interventions include the establishment of gender units or focal points in all departments in each province and the inauguration of women's caucuses in the provincial parliament. The article then analyses the gender equality laws in Nigeria and South Africa with a view to extract some lessons from the latter.

Comparative overview of the gender equality laws in Nigeria and South Africa

The current Nigerian and South African constitutions were adopted in 1999 and 1996 respectively. The Nigerian constitution adopts federalism while the South African system is a quasi-federal state defined as a co-operative government (Tepeciklioglu, 2018). Both countries however adopt different approaches to issue of gender inequality. South Africa has elaborate anti-discriminatory laws on gender basis. Apart from the South African Constitution, 1996, there is the EEA and PEPUDA. To bridge the gender equality gap, among other things, the equality court was also created. There are also strong and robust enforcement mechanisms at the national, provincial and local levels as enumerated above. The South African state adopts the substantive approach to bridge the gender equality gap, which may not be divorced from her history, as apartheid had contributed vastly to the observed gender gap at the workplace. South African statutes also create an affirmative policy to promote gender equality at the workplace (section 3&5 of EEA). The Nigerian state however, has no special statute for promoting gender equality at the workplace, apart from the general constitutional provision that provides that prohibits discrimination on the many grounds including sex. There are also some obsolete provisions in certain Nigerian labour statutes, like the Police Act, 2004 and Labour Act, 2004 that need to be expunged as stated above.

Lessons from South Africa and key recommendations

From our discussion above, it is evident that Nigerian statutes failed to adequately provide for gender equality at the workplace. The presence of certain discriminatory laws and practice like the enumerated sections of the Police Act, 2004 and Labour Act, 2004 affect women negatively at the

workplace. The Nigerian government signed most of the universal and regional conventions geared towards the gender equality, like CEDAW, but unfortunately has failed to domesticate it as required by the Nigerian Constitution (section 12 of the Nigerian Constitution, 1999). Some authors attributed the failure of the Nigerian National Assembly to domesticate CEDAW despite the effort of the Ministry of Women Affairs to initiate a bill on gender equality to bigotry and religious influence (Afolabi, 2019; Para-Mallam, Lanre-Abass, Adamu & Ajala, 2011). In contrast, to the Nigerian situation, the South African have enacted far reaching statutes to domesticate the regional and international instruments; and have created permanent institutions to enforce these laws (SAHRC, 2018). The result is that the South African laws on gender based equality and enforcement mechanism is more robust than the Nigerian law due to the fact that the former has specific statutes like EEA and PEPUDA.

Given this background the author submits that some discriminatory provisions in the Nigerian Constitution, 1999, Nigerian Labour Act, 2004 and the Police Act, 2004 should be expunged as stated above because it fosters gender inequality. There is also the need to domesticate gender based treaties like CEDAW, earlier signed by Nigeria, without reservation since 1985, in order to bring about a gender friendly workplace (Para-Mallam, et al, 2011; Afolabi, 2013). The enactment of new laws in line with the South African position by enacting statutes like the EEA is also important to bridge the gender gap in the Nigerian workplace. This article also recommends that the Federal Character Commission Act should be amended to include discrimination on gender basis, subject to the fact that the female gender possesses minimum qualification for the reserved position in order to address the historical gender discrimination that was pervasive in the past.

Conclusion

The article maintained that the certain laws guiding employment relationship such as the Labour Act, 2004 and the Nigerian Police Act, 2004 in Nigeria are not gender biased. In addition, there is no specific statute that addresses issue of gender equality in the Nigerian workplace. Thus, there is a need to borrow a leaf from the South African gender equality laws because it addresses issues of gender equality by providing for enforcement mechanism and appropriate policies. There is also a need to address the historical injustice to women in Nigeria by the amendment of the Federal Character Commission Act to include women's representation, instead of only ethnic representation, which is the Act's current preoccupation. This recommendation however comes with a caveat, that the Federal Character Act as it is currently operated should be reformed. Under the current dispensation, federal character policy is criticized for sacrificing merit on the altar of widespread representation (Joshua, Loromeke, & Ilemobola, 2014). The operation of Federal Character Act is better illustrated in the cut off mark for the National Common Entrance Examinations (NCEE). In 2013 NCEE, pupils from Zamfara State in North Western Nigeria who score 2 and 4 for the female and male students respectively are admitted to federal funded Unity Colleges, however male and female students from Anambra State in South Eastern Nigeria must score 139 to be offered the same admission (Joshua, et al, 2014)! I posit that in appointed positions where women are not fairly represented in Nigeria, a woman should be appointed in preference to men if both of them possess similar qualification, comparable experience and competence. The major reason with my obsession with competence and skills of the incumbent is the faulty implementation of Federal Character Act in Nigeria which was rightly criticized for enthrone nepotism and clannishness, among other vices (Tion & Orluchukwu, 2015; Ugoh & Ukpere, 2012).

For elective offices in Nigeria, it is my position that the populace should be able to choose whoever could convince them as the appropriate representative in a democratic election. However, the

practice whereby the political parties in Nigeria encourages women to participate in partisan politics and contest election by waiving nomination fees is commendable. The article maintained that great emphasis should be placed on BFOQ in recruitment, selection and placement processes at the Nigerian workplace. Similarly, if there is a need to apply some rules that give preferential treatment to a disadvantaged group like women in the Nigerian workplace, but, issues such as experience, competence and possession of necessary skills must not be compromised, as stated above in this article. Furthermore, any individual willing to go far at the workplace must be desirous of paying the price. The task to be done at the workplace is gender, age and race neutral. The workplace in a globalised world requires an achiever devoid of excuses. In addition, anyone who is disposed to embracing the privileges, power and benefit, must also partake in the duties, liabilities and disabilities of the office as well, even if he or she is to rely on federal character. In the final analysis, I posit that the principle of reverse discrimination being canvassed in the Nigerian workplace would be unfair unless some strict safeguards are institutionalised ab-initio. This is because unmonitored affirmative action could easily be turned to an opportunity for the blanket appointment of persons who are not suitably skilled. The aftermath of such unmonitored affirmative action is dysfunctional service delivery which is currently the hallmark of Nigerian public institutions.

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