

LEGAL AND INSTITUTIONAL FRAMEWORKS ON GENDER IMBALANCE AND WOMENS' RIGHTS IN NIGERIA: AN APPRAISAL

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Abstract

This article examined legal and institutional frameworks on gender imbalance and women's rights in Nigeria. There is need for equal treatment of everyone irrespective of gender. Nigerian women face a lot of discrimination capable of limiting their opportunities to develop their full potential based on equality with the men. Women are far from enjoying equal rights in the Nigeria's social, economic and political spaces, due mainly to their domestic burden, poverty, low level of educational attainment, biases against their employment in certain branches of the economy or types of work they are allowed to undertake as well as discriminatory salary practices. There is need for equal treatment of everyone irrespective of gender. Gender balance is important in a society as it allows males and females to have equal opportunities to fully realize their human rights and contribute to and benefit from social, economic, political, and political cultural development. Gender discourse is very significant everywhere, calling to attention the unnecessary difference between the locations of men and the women in the State and the society in nearly every facet of life. It is recommended amongst others that section 17(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be made part of the justiciable provisions of Chapter IV thereof by way of amendment as this will promote gender balance in the economic space of the country.

Keywords: *Gender Imbalance, Women Rights, Patriarchy, Human Rights*

1.0 Introduction

Nigerian women face a lot of discrimination capable of limiting their opportunities to develop their full potential on the basis of equality with the men. Women are far from enjoying equal rights in the Nigeria's social, economic and political spaces, due mainly to their domestic burden, poverty, low level of educational attainment, biases against their employment in certain branches of the economy or types of work they are allowed to undertake as well as discriminatory salary practices. Women in some establishments in Nigeria are not allowed to get married or even pregnant for the reason that it is thought that such will reduce their productivity.¹ This is against the provision of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) which promotes equal treatment of everyone irrespective of birth.²

There is need for equal treatment of everyone irrespective of gender. This fact is emphasised in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN),³ regional legal instruments like Constitutive Act of the African Union 2000 (CAAU),⁴ Protocol to the African Charter on Human

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¹ Police Regulation 1968, regulation 124.

² CFRN 1999, s 42(2).

³ *Ibid.*

⁴ CAAU 2000, art 4(1).

and Peoples' Rights on the Rights of Women in Africa (PACHPRRWA),⁵ the Solemn Declaration on Gender Equality in Africa 2004 (SDGEA),⁶ as well as international legal instruments like United Nations Charter 1945,⁷ United Nations Universal Declaration of Human Rights 1948 (UDHR),⁸ International Covenant on Economic, Social and Cultural Rights, 1966 (ICESR),⁹ International Covenant on Civil and political Rights, 1966 (ICCPR),¹⁰ Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW),¹¹ and the Beijing Declaration and Platform for Action 1995 (BDPFA).¹² These instruments clearly demonstrates regional and international consensus on the need to treat everyone equally irrespective of gender.

2.0 Conceptual Framework

2.1 Social Inequality

Social inequality is the unequal distribution of resources such as wealth, income and power; opportunities relating to health, employment and education. Social class, ethnicity, age and gender are sources of inequality in modern society. The concept of social inequality refers to differences in such parameters that have an influence on the social position of a person. These characteristics are goods, or resources in a broad sense, that are much in demand in a society. In order to be considered and treated as social inequality, the unequal distribution of these resources or goods ought not to be accidental or natural, for example, the size of the body of a person, but such must be systematically made by a social process. If the occurrence of this systematically unequal distribution is regular between the same social groups, then this inequality will be seen as inequity and is capable of becoming a social problem.¹³ Social inequality exists in a society once people often receive more of a society's valuable goods than others based on their position in the social network of relationships.¹⁴

2.2 Gender Imbalance

Gender imbalance or inequality manifests as hierarchical genders relations, with the men above women, and the women being considered as inferior and less valuable only by virtue of their sex. Gender hierarchy is manifested in inheritance laws and customs; family relationships, valuations of women's work as well as its general invisibility; including the power to make decisions in society, work place, the family, religious and other cultural institutions. It is obvious in the relative opportunities that are available to women and the girls for education, development, nutrition and health and in the pattern of violence between the sexes. Generally, such hierarchy is accepted by both sexes, and it is not usually questioned within its cultural context.¹⁵

⁵ PACHPRRWA 2003, preamble, para 2.

⁶ SDGEA 2004, preamble, para 1.

⁷ UN Charter 1945, art 8.

⁸ UNDHR 1948, art 2.

⁹ ICESR 1966, art 2(2).

¹⁰ ICCPR 1966, art 3.

¹¹ CEDAW 1979, art 3.

¹² BDPFA 1995, declaration 25.

¹³ A K Sen and J E Foster, *On Economic Inequality* (Oxford: Clarendon 1997) 29.

¹⁴ *Ibid*, 30.

¹⁵ A Mikkola and C A Miles, 'Development and Gender Equality: Consequences, Causes, Challenges and Cures' [2007] *Helsinki Centre of Economic Research*;6.

2.3 Patriarchy

Patriarchy is a system of society or government in which the father or eldest male is head of the family and descent is reckoned through the male line. The term ‘Patriarchy’ has been reconstructed in the past two decades to examine the origins as well as conditions of oppression of women by the men.¹⁶ Initially, patriarchy was a term used in the description of the power of a father as head of a family or household. Patriarchy is a term that has been used within the post 1960s feminism in referring to the systematic organization of male supremacy and female subordination.¹⁷ Patriarchy has been identified as a system of male authority in a society that oppresses the women through its political, economic and social institutions.

2.4 Human Rights

Human rights are regarded as such evaluative principles or those normative social representations that could permit, at least at the point of the intention, human beings to evaluate and organize their interactions and relations.¹⁸ However, revolutionary ideas about human rights in its universal nature that were originally formulated as reactions against the arbitrariness of established powers (such as in 1776 at the occasion of the American Declaration of Independence and in 1789 for the French Declaration of the Rights of Man and Citizen) and were later gradually invested with new meanings. Human rights are visibly normative social representations, even if they are also essential political as well as judicial realities.

3.0 An Appraisal of the National Legal Framework on Gender Imbalance and Women’s Rights in Nigeria

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

The CFRN 1999 (as amended) has several provisions pertaining to the promotion of gender balance in social, economic and political spaces of the country. It recognizes the right of everyone irrespective of gender and no one is expected to deny another the enjoyment of these rights. Of all the rights, three are directly important and relevant to this present article. These include right to freedom from discrimination,¹⁹ right to peaceful assembly and association²⁰ and social objectives²¹ as provided under Chapter II of the CFRN 1999.

Discrimination has become one of the reasons for gender imbalance in Nigeria’s social, economic and political spaces and has generated many controversies in the country. The CFRN 1999 provides for freedom from discrimination.²² Accordingly, the CFRN frowns at subjection of any person to any form

¹⁶ C Kramarae, ‘The Condition of Patriarchy’ in C Kramarae and D Spender (eds), *The Knowledge Explosion* (London: Athen Series, Teachers College Press 1992) 17.

¹⁷ *Ibid*; J Stacey, ‘Untangling Feminist Theory’ in D Richardson and V Robinson (eds), *Introducing Women’s Studies: Feminist Theory and Practice* (London: Macmillan 1993) 20; I O Aina, ‘Women, Culture and Society’ in S Amadu and O Adetanwa (eds), *Nigerian Women in Society and Development* (Ibadan: Dokun Publishing House 1998) 10.

¹⁸ W Doise, ‘Human Rights: Common Meaning and Differences in Positioning’ [2003] 19 (3) *Social, Work and Organizations Psychology*; 201 <<https://www.scielo.br/j/ptp/a/QJ5svFQsGTbGvT9hrmZJzWM/?format=pdf& lang=en>> accessed 24 August 2023.

¹⁹ (n2).

²⁰ *Ibid*, s 40.

²¹ *Ibid*, s 17(3)(a).

²² *Ibid*.

of deprivation or disability simply because of the circumstances of the birth of the person.²³ Thus, the Court of Appeal (CA) has made pronouncement on the protection of the right of a person to freedom from discrimination in the case of *Nwafor v EFCC*,²⁴ when it frowned at the rejection of a surety merely on account of her sex. Such act was found to have promoted discrimination and unconstitutionality.²⁵ The CA also declared in the case of *Mohammed v Nigerian Army Council*,²⁶ that right to freedom from discrimination was constitutionally guaranteed under section 42 of the CFRN 1999 (as amended). The Supreme Court (SC) of Nigeria stated in the case of *Lafia Local Govt. v Gov., Nasarawa State & Ors*,²⁷ that “by virtue of section 42(2) of the Constitution, no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”²⁸ Discrimination is a serious violation of human rights. Human right is given special treatment even at the stage of appeal in Nigeria. Thus, the SC held in the case of *FBN v AG Fed.*,²⁹ that where the claim subject of appeal seeks enforcement of fundamental rights, the appeals lies as of right and hence the question of whether the ground of appeal is one of mixed law and facts would not be applicable. Such ground of appeal is a ground of law that needs no prior leave to appeal.³⁰

Discrimination remains one of the major setbacks or hindrances to the protection as well as enforcement of the rights of women in Nigeria. This is further promoted by the patriarchal nature of the Nigerian society, which encourages discriminatory treatment of women; hence, women are denied access to some platforms, which men ordinarily have unfettered access to.³¹ It is argued that the provision of section 42(3) of the CFRN 1999 indirectly promotes the discrimination of women as it provides that:

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 as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.³²

With the above provision of the CFRN 1999, the positions in the Nigeria Police Force, whereby women are not given the same treatment like their male colleagues is further sustained. This sub-section of the CFRN has been argued that it “precludes one from challenging laws which are discriminatory with respect to any office under the State, in the armed forces, the Nigerian Force or a body corporate established directly by any law in force in Nigeria”.³³

²³ *Ibid.*

²⁴ (2021) 13 NWLR (pt 1794) 548.

²⁵ *Ibid.*

²⁶ (2021) 13 NWLR (pt 1794) 555.

²⁷ (2012) 17 NWLR (pt 1328) 94.

²⁸ *Ibid; Uzoukwu v Ezeonu II* (1991) 6 NWLR (pt 200) 708.

²⁹ (2018) 7 NWLR (pt 1617) 121.

³⁰ *Ibid; Jim-Jaja v COP, Rivers State* (2013) 6 NWLR (pt 1350) 225.

³¹ A A Oluwakemi, ‘Women and Reproductive Health Rights in Nigeria’ [2013] (6) (5) *OIDA International Journal of Sustainable Development*;127.

³² (n2), s 42(3).

³³ M O A Ashiru, ‘A Consideration of Nigeria Laws which are Gender Insensitive: The Female Gender in Focus’ [2010] (1) *University of Benin Journal of Private and Property Law*;94.

Although, the CFRN promotes the right of everyone in Nigeria to be freely assemble and associate for the purpose of politics amongst others.³⁴ Citizen participation in the political space regardless of religion, gender, or social class has become an important element in contemporary government management and operations.³⁵ Gender imbalance in Nigeria political defeats the purpose of this provision of the CFRN.

The need for the enjoyment of the all the rights recognized in the CFRN is further under underscored in Chapter II thereof. The State is directed to ensure that its social order is founded on the ideals of equality, freedom and Justice.³⁶ Accordingly, it is the responsibility of the State to promote equality of rights, opportunities and obligations among everyone without any distinction as to sex, religion, and so on.³⁷ Gender balance in the economic space in Nigeria is promoted by this provision of the CFRN when it provides that the State is to direct its policy towards ensuring that every citizen of Nigeria opportunity for securing adequate and satisfactory means of livelihood and opportunity for suitable employment without any discrimination by reason of any group that the person belong.³⁸ Everyone is entitled to equal pay for equal work and no one is to be discriminated against on ground of sex or any other reason whatsoever.³⁹ The problem associated with this Chapter of the CFRN is that of justiciability as the provisions are not justiciable.

The government has espoused different measures in an endeavour to address the issue of discrimination and gender inequality in Nigeria.⁴⁰ For example, the Government of Nigeria adopted the National Gender Policy in 2007, which is a measure aimed at supplementing section 42 of the CFRN that prohibits discrimination on ground of sex in Nigeria.⁴¹ One of the major objectives of the 2007 policy is to build a society that is just and devoid of discrimination; to harness the full potentials of every social group in spite of sex or the circumstance of birth; the promotion of the enjoyment of fundamental rights and protection of the health, economic, political and social wellbeing of all every citizen in order to ensure the achievement of equitable rapid economic growth.⁴² The Court of Appeal (CA) held in the case of *Timothy v Oforka*,⁴³ that any custom or law that stands in the way of the constitution should not be allowed to stand tall no matter the circumstances. The CA also condemned an action aimed at promoting discriminatory practice in the *Yetunde Tolani v Kwara State Judicial Service Commission & Or*,⁴⁴ when it held that the appointment of a female magistrate that was later terminated on the basis of her single status was illegal and void. Thus, it ordered her immediate re-instatement.⁴⁵

³⁴ (n2), s 40.

³⁵ D Mwesigwa, 'Towards Enhancing Local Citizen Participation in Uganda' [2021] (1) (1) *Dynamics of Politics and Democracy*;15.

³⁶ (n2), s 17(1).

³⁷ *Ibid*, s 17(2)(a).

³⁸ (n2), s 17(3)(a).

³⁹ *Ibid*, s 17(3)(e).

⁴⁰ E Durojaye and B Okeke, 'How Effective is Gender Mainstreaming at the National Level? A Comparative Study of Nigeria and South Africa' [2012] (13) (1) *Economic and Social Rights Review*;3.

⁴¹ *Ibid*.

⁴² *Ibid*.

⁴³ (2008) 9 NWLR (pt 1091) 8.

⁴⁴ (2009) LPELR- CA.

⁴⁵ *Ibid*.

3.2 Labour Act 2004

The Labour Act (LA) was enacted for the consolidation of laws relating to labour in Nigeria.⁴⁶ The Act makes general provisions for the protection of wages, contract, terms as well as conditions of employment.⁴⁷ There are some discriminatory provisions of this LA with reference to the women. The LA provides against the employment of the women in the public and private sector on night work and agricultural undertakings.⁴⁸ The only exemption from the provision of section 55(1) of the LA is where the woman is a nurse or that the type holding a position in the management of such employment and that does not involve engaging in manual labour.⁴⁹

The above promotes gender imbalance in Nigeria's economic space. It also serves as statutory limitation on the capacity of Nigerian women to freely accept any employment of their choice.⁵⁰ The provision of the LA restricting women from partaking in night work represents customary undertones promoting discriminatory practices against the women.⁵¹ This is below international best practice and standard as it is a kind of exclusion, restriction or distinction on ground of sex which is the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW).⁵² It denies women the right to work. This inalienable right ought to be enjoyed by everyone irrespective of sex.⁵³

Women are not allowed to be engaged in underground work. The only permissible ground for women to be engaged in such work is on ground of a woman's position in the management of the organization and, where such work does not require the performance of manual labour. In addition, where the woman works in welfare or health services, or only spends a period in underground as a requirement of training and where she enters the underground as part of a mine for reason of any non-manual occupation in the employment.⁵⁴

All the above positions of the LA as spelt out in sections 55 and 56 thereof promote gender imbalance in Nigeria's economic space. With these provisions, women are faced with some restrictions in the workplace. These provisions of the LA do not recognize the requirement of the International Labour Organisation (ILO) on equal treatment of every worker on equal basis devoid of discrimination on whatsoever ground.⁵⁵

3.3 Police Act 2020 and Police Regulations

Over the years, the discrimination against women police officers on ground of gender has generated a lot of debate and controversies. Ordinarily, women police officers were required to apply to the Commissioner of Police in the State Command where she is serving seeking for consent as well as permission to get married. For such permission to be granted, the person must have served in the force

⁴⁶ LA 2004, preamble, para 1.

⁴⁷ *Ibid*, para 2.

⁴⁸ *Ibid*, s 55(1).

⁴⁹ *Ibid*, s 55(2).

⁵⁰ E A Oji I and O D Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi and Associates Nig. Ltd. 2015) 57.

⁵¹ *Ibid*

⁵² CEDAW 1979, art 1.

⁵³ *Ibid*, art 11.

⁵⁴ (n46), s 56 (1) and (2).

⁵⁵ ILO Convention No 111 on Discrimination (Employment and Occupation) Convention 1958, art 2.

for a period not less than three (3) years.⁵⁶ Police Regulations provides that an unmarried police woman that is pregnant would be discharged from the police force, and can only be re-instated on the approval of the Inspector General of Police.⁵⁷ This position as well as others that promoted gender imbalance in the repealed Police Act⁵⁸ could be argued to have changed in view of the provision of section 135 of the Police Act 2020 (PA) which provides thus:

The Police Force or other persons shall not, in the performance of his or its functions under this Act, regulations or standing orders made under this Act, discriminate against any person on the basis of gender as provided under section 42 of the Constitution of the Federal Republic of Nigeria, 1999.⁵⁹

The above provision of the new PA is pertinent because of its promotion of gender balance. The new PA empowers the Minister charged with responsibility over police matters to make regulations on the recommendation of the Inspector-General of Police (IGP), with respect to necessary policy, organisation as well as administration of the Police Force, the Police Service Commission, with respect to the appointments, promotions as well as disciplinary control of police officers as specified in the CFRN.⁶⁰ This is a way of repealing or deleting the provisions of the regulations promoting gender imbalance.

The Police Regulations is an important component of the PA as it contains more detailed provisions on the administration of the Police. The existing Police Regulations, which entered into force in 1968, is yet to be reviewed in spite of the above position of the new PA. The introduction of the section empowering the Minister to make regulations creates a basis for the comprehensive review of the Police Regulations. At present, Police Regulations contain provisions that are discriminatory to women police officers. These provisions are in conflict with the provisions of the CFRN against discrimination and section 135 of the PA 2020, which also prohibits gender discrimination.

It is the right of all citizens of Nigeria to be treated equally in all endeavours. The case is different with respect to the women in view of the Police Regulations of 1968. However, the problems of discrimination against the women emanated from their social background.⁶¹ Religious beliefs and customs also contribute to this problem. Hence, it has been argued that “the status of women and children in Nigerian is determined not only by law, but also by customs, cultural influence, religion and attitude of the society”.⁶²

3.4 National Drugs Law Enforcement Agency Act 2004

The Nigerian Drug Law Enforcement Agency (NDLEA) Act 2004 established the National Drug Law Enforcement Agency (NDLEA) in Nigeria. The NDLEA is empowered to make standing orders

⁵⁶ Police Regulation 1968, reg. 124.

⁵⁷ *Ibid*, reg. 127.

⁵⁸ PA 2020, s 139.

⁵⁹ *Ibid*, s 135.

⁶⁰ *Ibid*, s 138.

⁶¹ O A Idowu, ‘Factors Affecting Female Police Officers’ Performance in Akure Command, Ondo State, Nigeria’ [2016] (6) (3) *Research on Humanities and Social Sciences*;44.

⁶² S G Ehindero, *The Nigeria Police and Human Right* (Jos: 1st edn, Ehindero Press 1998) 48.

regulating its proceedings and any committee thereof.⁶³ Accordingly, NDLEA Order was made in 2002. This promotes gender imbalance in Nigeria's economic space as it accentuates the discrimination of women in some of the regulations thereunder. Under the Order, all female applicants must be unmarried at the point of their recruitment into the NDLEA and shall remain unmarried for a period of not less than two (2) years in service.⁶⁴ Furthermore, any unmarried woman in the service of the NDLEA who is desirous of getting married must also apply in writing to the Chairman/Chief Executive, seeking for the permission to marry and the particulars of the person the woman intends to marry must be stated in the application.⁶⁵

3.5 African Charter on Human and Peoples' Rights (Ratification and Enforcement), 1983

The African Charter on Human and Peoples' Rights (ACHPR) was adopted at Banjul, Gambia on 27/6/1983 serving as a major human rights instrument in the African region. As a State Party to the African Union and signatory to the ACHPR, the ACHPR was domesticated 17/3/1983 as part of Nigeria's body of laws as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983 (ACHPRREA), and while it entered into force five years after its adoption on the 21/10/1986. The ACHPRREA provides for the right of everyone irrespective of gender, race, nationality or political association to the enjoyment of the rights as well as freedoms enshrined therein.⁶⁶

One of the major reasons for the adoption of this important human rights instrument is to end discrimination on ground of sex, religion, race, political opinions, colour and ethnic group in all its forms.⁶⁷ The ACHPRREA recognises the legal status of everyone irrespective of gender.⁶⁸ It recognises the fact that no individual is to be denied the right to the enjoyment of the rights and freedom recognised and guaranteed therein. Thus, sex, religion, language, race, and nationality should not be considered as the basis for the enjoyment of these rights.⁶⁹ More importantly, the ACHPRREA emphasises the need for equal treatment of everyone before any law in existence and the protection of everyone on equal level.⁷⁰ Therefore, it is submitted that gender imbalance in Nigeria's social, economic and political spaces is the provisions of the ACHPRREA promoting equality of all.

The ACHPRREA promotes gender in Nigeria's economic space as it recognises the right of everyone to work under equitable conditions of work and that such work condition must be satisfactory and everyone is to receive equal payment for the same kind of work performed.⁷¹ It provides against the domination of people any ground whatsoever and that such act of domination where it thus happens should not be justified. It continues that everyone has the same rights and should be allowed to enjoy

⁶³ NDLEA Act 2004, first schedule.

⁶⁴ NDLEA Order, 2002, art 5(1).

⁶⁵ *Ibid*, art 5(2).

⁶⁶ ACHPRREA 1983, art 2.

⁶⁷ *Ibid*, preamble, para 9.

⁶⁸ *Ibid*, art 5.

⁶⁹ *Ibid*, art 2; *Nwosu v Nwosu* (2012) 8 NWLR (pt 1301) 1.

⁷⁰ (n66), art 3(1) and (2).

⁷¹ *Ibid*, art 15.

all these rights equally.⁷² To this end, any legislation permitting and promoting labour legislation in Nigeria's social, economic and political spaces is against this provision of the ACHPRREA.

4.0 Institutional Framework on Gender Imbalance in Nigeria and Women's Rights in Nigeria

Some institutions are relevant to this paper. These institutions are examined in this segment. They include; National Human Rights Commission, International Federation of Female Lawyers, Ministry of Women Affairs and Social Welfare, National Council of Women's Societies, the Judiciary, Women Consortium of Nigeria, and Women's Rights Advancement and Protection Alternative.

4.1 National Human Rights Commission

National human rights institution may be established in a country through its Constitution or the legislative or executive branch of its government. It may be structured as a separate institution in its own right and only responsible to the legislature, an arm of the executive branch or an independent office of the legislature. The mandate of the National Human Rights Commission (NHRC) to protect as well as promote human rights may cover government conduct only or may also extend to cover other cases in the private sector (for example, discrimination in employment and the provision of services).⁷³

The NHRC of Nigeria was established in Nigeria in 1995⁷⁴ after considering that the UN Charter and the provisions of the CFRN 1999 are based on the principles of dignity and equality of every human being and seek, among other basic objectives. The promotion and respect for human rights and fundamental freedom for all individuals without distinction as to sex, race, religion or language,⁷⁵ and the desire of the Federal Government of Nigeria to create an enabling environment for extra-judicial recognition, promotion as well as enforcement of all rights recognised and enshrined in the CFRN 1999, the international and regional instruments and under any other existing legislation.⁷⁶

The NHRC is empowered to carry out the role of dealing with every matter concerning the protection and promotion of human rights as guaranteed by the CFRN and other regional and international instruments on human rights to which Nigeria is a party;⁷⁷ monitoring and investigating all alleged cases of human rights violations in the country and thereafter make appropriate recommendations to the Federal Government for possible prosecution;⁷⁸ assisting victims of human rights violations as well as seeking appropriate remedies and redress on their behalf;⁷⁹ undertaking studies on every matter relating to human rights and assisting the Federal, State and Local Governments where necessary in the formulation of proper policies on the guarantee of human rights.⁸⁰

⁷² *Ibid*, art 19.

⁷³ L C Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' [2000] (13) *Harvard Human Rights Journal*;7.

⁷⁴ NHRC (Amendment) Act 2010, s 1(1).

⁷⁵ *Ibid*, preamble, para 1.

⁷⁶ *Ibid*, para 3.

⁷⁷ *Ibid*, s 5(a).

⁷⁸ *Ibid*, s 5(b).

⁷⁹ *Ibid*, s 5(c).

⁸⁰ *Ibid*, s 5(d).

The NHRC has a role to promote human rights beyond Nigeria by participating in such manner it considers proper in every international activity relating to the protection and promotion of human rights;⁸¹ receiving and investigating complaints pertaining to human rights violations and make proper determination as may be considered necessary in each circumstance;⁸² examining any existing law, administrative provisions as well as proposed bills or bye-laws for the purpose of ascertaining whether such enactments or the proposed bills or bye-laws are not inconsistent with human rights norms.⁸³ These and the above are some of the functions of the NHRC in Nigeria.

4.2 International Federation of Female Lawyers

International Federation of Female Lawyers (FIDA) is an acronym of the original Spanish appellation *Federacion Internacional de Abogadas*, which is translated in English as “the International Federation of Women Lawyers.”⁸⁴ The FIDA was formed on 3/08/1944 by a group of seven women lawyers from Cuba, El Salvador, Mexico, Puerto Rico, and the United States as a strictly non-political, non-governmental, non-religious, not-forprofit association of women called to the practice of law.⁸⁵ At its founding, the primary role of FIDA was the promotion of the rights of both women and children.⁸⁶ With the adoption of the UDHR and other human rights instruments, the FIDA broadened its objectives to include promotion of human rights.⁸⁷

The FIDA was admitted into the ranks of UN NGOs in 1952, and it became a member of the Conference of Non-Governmental Organisations (CoNGO). It was officially granted a Consultative Class 2B status at the UN in 1954. At present, the FIDA has memberships spread round more than 70 countries in all regions of the world along with several thousands of individual members.⁸⁸ FIDA Nigeria was established in 1963 as an affiliate of FIDA international, to accomplish the objectives of the women association in Nigeria. Currently, it operates through national branches in the country.⁸⁹ The mission of FIDA Nigeria include; enhancement and promotion of the welfare of women and children; promotion of the study of comparative law; promotion of the legal and social principles and aims of the UN; and establishment of friendly international relations on the basis of equality as well as mutual respect for all peoples.⁹⁰

FIDA carries out its mission by way of extending its activities in every locality through the formation of committees, including global partners; furthering the dissemination of knowledge of the law; through the advancement of opportunities for women in the social, political, civil, educational fields and in industry, legal profession and business; seeking and advocating for passage of appropriate legislation

⁸¹ *Ibid*, s 5(h).

⁸² *Ibid*, s 5(j).

⁸³ *Ibid*, s 5(k).

⁸⁴ FIDA, ‘Who We Are?’ [2013] <<http://www.fidafederation.org/who-we-are/>> accessed 5 September 2024.

⁸⁵ FIDA, ‘History’ [2010] <<http://www.fidafederation.org/history/>> accessed 5 September 2024.

⁸⁶ *Ibid*.

⁸⁷ O Oluyede, ‘Non-Governmental Organisations and Non-Profit Organisations’ [2013] 47 *International Legal Developments Year in Review*;319.

⁸⁸ (n85).

⁸⁹ Oluyede (n87) 320.

⁹⁰ *Ibid*.

to advance as well as protect the rights of both women and children; and working for the equal rights of women under the law.⁹¹

FIDA cooperates with organised judicial associations for creating of better relationships between the bar and the bench. It functions through training and education, advocacy, enlightenment campaigns, policy development, resource counseling, publishing, and providing free legal services to indigent women as well as children.⁹²

FIDA renders *pro bono* legal services through its different branches. This happens in mediation, court representation, and counseling to indigent children and women. *Pro bono* advocates assist in a range of cases, including: child custody, divorce, maintenance, widow rights and inheritance, child defilement, rape, violence against women, domestic violence, as well as workplace discrimination issues.⁹³

4.3 Ministry of Women Affairs and Social Welfare

The origin of social welfare could be argued to have perhaps originated with the beginning of human life as well as their association with others.⁹⁴ In the ancient days, the spirit of neighbourliness as well as helping one another to collectively resolve or solve problems existed as the usual daily pattern and it is commonly recognised that the well-being of a single person affects that of his/her neighbours as well as that of others around.⁹⁵

Social welfare has its roots dated to the past and are deeply rooted in religion. The root of social welfare had its beginning in Europe particularly with the Elizabethan Poor laws of England. Nonetheless, a number of developments in Europe have set the stage for the development of social welfare in European countries and in Nigeria.⁹⁶

Social welfare activities are those programs designed specially and made available to certain selected people within a country. Social welfare is able to promote the well-being and a better functioning of social order.⁹⁷

The history of social welfare in Nigeria is similar to that of other advanced countries. There was a drift and relocation of individuals to urban cities because of urbanization, hence the movement away from people's traditional family settings as well as a decline in the traditional control on families and individuals.⁹⁸ Social welfare grew out of the social demands to prevailing problems. Social welfare connotes the welfare of individual, groups of individuals and the generality of the people. The Salvation Army was the first social welfare in Nigeria as way back as 1925. It was running "The Boys Industrial Home" in Lagos.⁹⁹

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Oluyede (n87) 320.

⁹⁴ A O Irele, 'The Evolution of Social Welfare and Social Work in Nigeria' [2011] (8) (3) *LWATI: A Journal of Contemporary Research*;238.

⁹⁵ *Ibid.*, 239.

⁹⁶ R A Skidmore and Others, *Introduction to Social Work* (Boston: Allyn and Bacon 1994) 97.

⁹⁷ J Hefferman, *Social Work and Social Welfare* (New York: West Publishing Company 1988) 6.

⁹⁸ Irele (n94) 241.

⁹⁹ *Ibid.*

In its formal conception, social welfare in Nigeria started as a humanitarian work by some Nigerians in the city of Lagos like Messers Eric Bob Manuel, Prince Akintoye, Mensah Bobe and Nelson Cole who came together and were actually motivated by the pathetic situation of the outbreak of the World War II. These led to the formation of the colony welfare services in Lagos. The colony welfare service handled marital problems but it later began to handle some other social problems like juvenile delinquency and prostitution.¹⁰⁰ Since the creation of states in Nigeria, social welfare has been extended to the various states and the federal capital territory. Social welfare departments are located in the ministry of Women Affairs and Social Development in these states.¹⁰¹

The Ministry of women affairs and social welfare is basically social service oriented, with responsibilities and functions of policy formulation, articulation as well as implementation of programmes and activities that are geared towards the promotion of the interests and welfare of the women, children, the elderly, people with disabilities as well as the vulnerable ones.¹⁰²

The Ministry carries out the roles of promoting women capacities in order to enable them fully contribute and participate actively in every phase of national development. This includes access as well as equal opportunities to education, health, political participation, economic empowerment as well as elimination of every form of discrimination against women. It also provides support and encourages collaboration with NGOs concerned with women and children issues and coordination of activities of women groups. It promotes welfare of the disable, care of the elderly and assistance to those distressed and other needy persons. It is essentially social service oriented, with functions and responsibilities of policy formulation, articulation as well as implementation of programmes and activities of Government geared towards the promotion of the interests and welfare of women, elderly, children, and people with disabilities and vulnerable.¹⁰³

The Ministry of Women Affairs and Social Development be it at the Federal or States level promotes the development of women with equal rights as well as corresponding responsibilities. Its objective includes, stimulating action to promote political, civic, economic and social participation of women; monitoring and coordinating women's programmes; providing financial and technical support to women.¹⁰⁴ Its vision is to help build a Nigerian society that guarantees equal access to economic, social and wealth creation opportunities to everyone, irrespective of gender, places premium on protection of the child, the aged and persons with disabilities; focuses attention on key operators in both private and public sectors on mainstreaming the concerns of these groups of people in national development process.¹⁰⁵

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid*, 244.

¹⁰² Irele (n94) 245.

¹⁰³ *Ibid.*

¹⁰⁴ M I O Nwogu and M C Ogochukwu, 'Women's Rights Protection in Nigeria: Institutional Framework and Challenges' [2013] 9 (3) *International Journal of Law*;54 <https://www.researchgate.net/publication/372952737_Women's_rights_protection_in_Nigeriainstitutional_framework_and_challenges/link/64d0c0bad394182ab3b05f3b/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uInB1YmxpY2F0aW9uIn19> accessed 10 September 2023.

¹⁰⁵ *Ibid.*

The mission of the Ministry is to serve as the national vehicle aimed at bringing about speedy and healthy development of Nigerian women and children, the socially disadvantaged as well as physically challenged, and the main-streaming of their rights and privileges in national development process. It has the mandate of advising government on gender and children issues. It also promotes literacy and health programs for the women.¹⁰⁶

4.4 The Judiciary

The judicial branch of a Government is expected to institute limitations as well as preventions in order to restrain the powers of the legislative and executive branches in their own domains as a way of ensuring that the acts of Governments remain lawful in the society. It is important that there exist laws outlining what the rights of the people are and what the duties of the State are. These should ideally include safeguards so that the State does not always abuse its powers or exceed its authority to a level that negatively affects human rights of the individuals.¹⁰⁷

This power is vested in the judiciary to undertake the substantial responsibility of interpreting the laws,¹⁰⁸ enforcing the safeguards for protection of human rights of every individual. Due to the influence of the judiciary, the individuals may enjoy equality in Nigeria's social, economic and political spaces. When the judiciary makes equitable decisions, those decisions set a valuable and helpful precedent for the future resolution of similar disputes between individuals or between individuals and the State. The judicial process emanating therefrom provides for the protection of the rights of individuals and groups, the effective implementation of the law, and sets a standard for subsequent equitable enforcement of the law. Thus, human rights of everyone irrespective of gender receive effective protection in the courts.¹⁰⁹

Both the High Court of a state and Federal High Court have concurrent jurisdiction on matters of breach or likely breach of any of the fundamental rights enshrine in Chapter IV of the CFRN 1999 (as amended).¹¹⁰ The State/Federal High courts in Nigeria have played important roles in promoting gender balance in the country. For instance, in the case of *Women Empowerment and Legal Aid (WELA) v Attorney General of the Federation*,¹¹¹ the Federal High Court (FHC), Ikeja judicial division, held that Regulation 124 of the Police Act was discriminatory as well as unconstitutional.¹¹²

The Court of Appeal (CA) condemned discrimination against women in employment in the case of *Tolani v Kwara State Judicial Service Commission & Ors*,¹¹³ per Sotonye Denton-West, JCA. The CA explored the provisions of core human rights instruments in arriving at its judgment. It explored the significance of the provisions of those human rights instruments that Nigeria had acceded to.

¹⁰⁶ Nwogu and Ogochukwu (n104).

¹⁰⁷ F Abul-Ethem, 'The Role of the Judiciary in the Protection of Human Rights and Development: A Middle Eastern Perspective' [2002] 26 (3) *Fordham International Law Journal*;761 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1883&context=ilj>> accessed 9 September 2023.

¹⁰⁸ (n2), s 6.

¹⁰⁹ Abul-Ethem (n107) 762.

¹¹⁰ *Ibim v Maduagwu* (2021) 5 NWLR (pt 1770) 596; *Jack v University of Agriculture, Makurdi* (2004) 5 NWLR (pt 865) 208; *Olutola v Unilorin* (2004) 18 NWLR (pt 905) 416; *Ogagu v State* (1999) 9 (NWLR (pt 366) 1; *EFCC v Reinl* (2020) 9 NWLR (pt 1730) 489; *F.U.T., Minna v Olutayo* (2018) 7 NWLR (pt 1617) 176.

¹¹¹ (Unreported) Suit No. FHC/IKJ/CS/M128/2010.

¹¹² *Ibid.*

¹¹³ [2009] LPELR-CA/IL/2/2008

Particularly, it utilised the human rights principles on non-discrimination and equality as laid down in the CEDAW, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women (OPCEDAW), UDHR, the United Nations Charter, and VDPA. All these instruments were utilised in conjunction with the non-discrimination provisions in the CFRN 1999 (as amended). This judgment portrays positive advancement as it enhances jurisprudence in the area of promoting gender balance and women's rights in Nigeria.

The SC held in the case of *Aviomoh v Elebeke*,¹¹⁴ that “the courts must protect human rights and resist any attempt or legislation that would directly or indirectly erode the efficacy of the inalienable fundamental rights donated by the 1999 Constitution.”¹¹⁵

5.0 Conclusion

The need for equal treatment of everyone irrespective of gender is emphasised in the Constitution of the Federal Republic of Nigeria 1999 (as amended), regional legal instruments like Constitutive Act of the African Union 2000, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003, the Solemn Declaration on Gender Equality in Africa 2004, as well as international legal instruments like United Nations Charter 1945, United Nations Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights, 1966, International Covenant on Civil and Political Rights 1966, Convention on the Elimination of All Forms of Discrimination against Women 1979, and the Beijing Declaration and Platform for Action 1995. These instruments clearly demonstrates regional and international consensus on the need to treat everyone equally irrespective of gender. Gender balance is important in a society as it allows males and females to have equal opportunities to fully realise their human rights and contribute to and benefit from social, economic, political, and political cultural development.

Based on the foregoing, this paper recommends that:

- i. Section 17(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be made part of the justiciable provisions of Chapter IV by way of amendment, as this will promote gender balance in the economic space of the country.
- ii. There should be effective domestication of relevant international legal instruments to which Nigeria is a signatory.
- iii. There should be effective enforcement of the legal framework against gender imbalance in Nigeria as this is a major challenge to gender balance in the social, economic and political spaces of the country.

¹¹⁴ (2022) 4 NWLR (pt 1819) 69.

¹¹⁵ *Ibid.*