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CEDAW and the Labour Act: Protecting Women from Workplace Discrimination in Nigeria

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Abstract

Workplace discrimination against women is prevalent in Nigeria from the recruitment process to the termination of the contract of employment. Majority of the cases border on discriminatory acts against women during the pendency of the contract of employment. There is a gender gap in employment rights of women. The work adopted the doctrinal method of research in critically examining the Labour Act and the provisions of Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on protection of women against workplace discrimination. It was found that sections 34(1), 55, 56 and 57 of the Labour Act is discriminatory. There is inadequate legislation in Nigeria on protection of women in a workplace despite ratifying CEDAW. The Nigerian Drug Law Enforcement Agency Order, 2002 contain provisions that constitute workplace discrimination against women. Also, Nigeria does not have an enforcement agency or commission to enforce anti-discrimination laws. It is therefore recommended that Sections 34(1), 55, 56 and 57 of the Labour Act and Article 5(1) and (2) of the NDLEA Order should be amended. Anti-discrimination laws to protect the rights of women in a workplace should be enacted and a commission should be established to enforce the laws.

Keywords: Workplace, Discrimination, Women, Employment, Employer.

1.1 Introduction

Discrimination against women is prevalent in various spheres of life. Some employers are reluctant to employ women because they are not willing to grant the rights that are accruable to pregnant or nursing mothers. Others are reluctant to employ women because they are of childbearing age.[1] To the employers, the absence of women in order to carry out their reproductive responsibility is a loss to their business.[2] In Nigeria, gender bias is the reason women suffer discrimination.[3] The gender of a child determines the role in masculine and feminine traits to be assigned to the child.[4] The cultural norms of the Nigerian society that holds men out as heads of families and women as their subordinate contributes to gender inequality.[5] Religion is also a factor that contributes to

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[1] Women in Law and Development in Africa (WiLDAF) Nigeria, 'CEDAW Daily Implementation in Nigeria (July 2002)' <www.wildaf-ao.org> accessed 29th April, 2021.

[2] *Ibid.*

[3] Olanrewaju Oluwaseun, 'Gender Identity and Justice in Nigeria: An Appraisal of Women in Lagos State' <https://digitalcommons.csbsju.edu/social_encounters/vol2/iss1/6> accessed 19 April, 2021.

[4] IS Babaita and MO Aliyu,'Gender Discrimination and Employment Decision: A Study of Selected Banks in Kano State, Nigeria'.<http://www.ajol.info/index.php/ajmr/article/view/193781/183051&> accessed 29 April, 2021.

[5] OC Okongwu 'Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria' <http://journals.sagepub.com/doi/abs/10.117/1358229120978915&ved=2ahUKEwizhoTU0IjwAhVx50AKHSG6B_8QFjAAegQIBBAC&usg=AOvVaw3wmDdYd71-bMdiRH7k5WRW> accessed 29 April, 2021.

gender equality as it shapes women into understanding that they are subjected to men. Men are regarded superior to women. Women are treated less favourably than men. This, affects the dignity of women as human beings.[6]

The dignity of women from degrading or inhuman treatment is guaranteed by the Constitution.[7] Also, the Constitution prohibits discrimination of any form.[8] It promotes gender equality. By the standard of the Constitution, a woman is not expected to be treated less of another human being. Despite this provision, there is workplace discrimination against women.

Discrimination is perceived in all stages of employment; advertisement of the job, recruitment process, pendency of the contract of employment and termination of the contract of employment. Advert for positions that state that a vacant position exists for a male or remarks during an interview that a man can do better on a particular job, a woman is being interviewed for, or outright refusal to pay women the same amount as men for identical jobs, a junior male worker is promoted to a managerial position in place of a senior female worker who is due for the promotion or termination on grounds of being pregnant are instances of discrimination against women in a workplace. Discriminations against women occur in private and public employment.

There is no single legislation on workplace discrimination in Nigeria. The Nigerian Constitution has a provision that broadly prohibits discrimination[9] and other laws prohibit discrimination with regard to a particular subject matter.[10] On a general note, the protection of women against discrimination in a workplace are contained in the domestic laws of Nigeria and international instruments (conventions/ treaties), instances which are Labour Act[11] and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[12]

The principal law that regulates the contract of employment in Nigeria is the Labour Act. It governs the contract of employment of workers who perform manual labour or clerical work in Nigeria.[13] The scope of the Labour Act is limited. The contract of employment of workers other than those contemplated in the Labour Act is regulated by the Constitution,[14] Nigerian legislation, International Best Practices (IBPs), International Labour Organisation (ILO) conventions, Collective Agreements, the contract of employment and laid down regulations. CEDAW[15] by virtue of ratification regulates the contract of employment to ensure gender equality.

CEDAW has provisions which prohibit discrimination against women in a workplace.[16] In its preamble, it emphasizes that despite enactment of various instruments, extensive discrimination against women still exists. This envisages that efforts have been put in place from time immemorial

[6]Olanrewaju Oluwaseun 'Gender Identity and Justice in Nigeria: An Appraisal of Women in Lagos State' (n 3).
[7] 1999 Constitution of the Federal Republic of Nigeria as amended in 2010 section 34(1).
[8] CFRN 1999 section 42.
[9]*Ibid*.
[10] For instance, Lagos State Protection of Persons Living with HIV and Affected by AIDS Law, 2007 and other similar laws prohibiting discrimination against persons living with HIV and AIDS as applicable in other states in Nigeria.
[11] Labour Act Cap L1 LFN, 2004.
[12] The Convention on the Elimination of All Forms of Discrimination against Women, 1981 (CEDAW).
[13] Labour Act (n 11) s 91.
[14] CFRN, 1999 (n 7).
[15] CEDAW (n 12).
[16]*Ibid*, Article 11.

to curb discrimination against women and it has persisted. Thus, CEDAW ensures States Parties to take appropriate steps to eliminate discrimination against women in the field of employment on a basis of equality of men and women. Therefore, CEDAW, promotes equality of rights of men and women and ensures women do not have the least opportunities for employment.

1.2 Meaning of Discrimination Against Women in a Workplace

There is no definition of the phrase 'discrimination against women in a workplace' in any law in Nigeria. It has been defined separately. CEDAW contains a definition of discrimination against women. It provides as follows:

> *"Discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".*[17]

The definition of CEDAW as contained herein does not include sexual harassment. The Committee on CEDAW rectified the defect and included sexual harassment in its definition.[18]

The definition of discrimination against women as provided by CEDAW takes into consideration the fact that the society regards men as being superior to women; entitling them to more rights than women. The notion is the basis for the advocacy for protection of women against discrimination. Thus, the essence of CEDAW's broad scope of operation in social, cultural, political and economic areas.

Workplace is defined to include any premises or place where a person performs work, needs to be, or is required to be in the course of employment.[19] The definition as proffered by Employee Compensation Act (ECA) is broad and encompassing to prevent an employer from escaping liability.

From the definitions given above (CEDAW and ECA), discrimination against women in a workplace can be stated to be an unequal or biased treatment of women in a place of employment on the ground that they are not men. Acts, conducts or words can constitute discrimination against women in a workplace.

1.2.1 What Constitutes Discrimination Against Women in a Workplace

Discrimination against women in a workplace can be direct and indirect.[20] Direct discrimination against women in a workplace refer to unequal treatment of men and women in a workplace wherein employers place men above women.[21] An instance of this is where a woman is given less retirement benefits than a man of same cadre/ level. On the other hand, when laws favour a man

[17] *Ibid*, Article 1.
[18] CEDAW Committee on Elimination of Discrimination against Women, General Recommendation 19, Article 11, 17-18. <https://www.legal-tools.org/doc/f8d998/pdf/&ved=2ahUKEwi4r8KY2dX> accessed 29 April, 2021.
[19] Employee Compensation Act 2010 (ECA) s 73.
[20] Oluwatosin AB and Ifedolapo AO 'Women, Their Rights, and Workplace Discrimination' https://www.iiste.org/Journals/index.php/IAGS/article/view/45010 accessed 29 April 2021.
[21] *Ibid*.

over a woman, it is indirect discrimination.[22] Instances of discrimination against women in a workplace are:

a. Biased recruitment process: The recruitment of persons in a workplace is based on qualification, skills and experiences. Employment of a man with less qualification, skills and experience than a woman on the basis that a man can do better on the job can constitute discrimination against women in a workplace.

b. Sexual harassment: Acts that constitutes sexual harassment are unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by word or actions.[23] Sexual harassment is discriminatory when a woman has reasonable grounds to believe that her objection will affect her employment.[24]

   The National Industrial Court Civil Procedure Rules stipulates acts that constitutes sexual harassment. This include: physical conduct of a sexual nature, a verbal form of sexual harassment, a non-verbal form of sexual harassment and quid pro quo harassment when an employer or supervisor or co-employee undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours.[25]

c. Unequal pay, promotions and benefits: Women have a right to equal remuneration with men in a workplace. This extends to right to equal terminal benefits. Where men are paid more than women for same work, it constitutes discrimination against women in a workplace.

d. Wrongful termination: Wrongful termination can constitute discrimination against women in a workplace. This can range from termination of employment on grounds of marriage or pregnancy or maternity leave. The case of *Mrs AmaechiLaurettaOnyekachi v Stanqueen Investment Ltd* [26]can be illustrated to buttress this point. In the case, a pregnant employee's contract of employment was terminated shortly after she applied for maternity leave. The National Industrial Court of Nigeria (NICN) awarded general damages against the defendant for the wrongful termination.

1.3 The Labour Act and Workplace Discrimination Against Women

The Labour Act is the principal legislation governing the contract of employment in Nigeria. Its provisions regulate the relationship of an employer and a worker/ employee. Its scope of operation is however restricted to manual labour and clerical work and the definition of a worker in the Act does not include a casual worker. It then means that the Labour Act is limited in its scope of operation as workers other than manual and clerical are not protected under the Act. Possibly, the aim of the Act is to protect manual and clerical workers who do menial work, and who may be vulnerable to the employers without even a contract of employment regulating the relationship.

[22]*Ibid.*
[23] CEDAW Recommendation 19 (n 18).
[24]*Ibid*.
[25] National Industrial Court Civil Procedure Rules 2017 Order 14.
[26] Unreported Suit No. NICN/LA/271/2014 delivered on 4th December 2015.

The exclusion of casual workers has deprived them of protection under the Act. Casual work is common in the private sector.[27] It is a problem in the glare of the Nigerian society thus, warranting the National Assembly to amend the Labour Act to criminalise casualization beyond six (6) months in Nigeria.[28] The Labour Act has provisions that protect women in a workplace.

1.3.1 Provisions in the Labour Act on Protection of Women

The Labour Act has provisions that ensures that women are protected under the Act. This protection is accorded to pregnant and nursing (lactating) mothers.

a. Pregnant women: A woman is entitled to maternity leave under the Act.[29] This applies to women in private and public industrial or commercial undertaking.[30] The right to maternity leave is not automatic. A woman is required to produce a medical certificate issued by a registered medical practitioner and the certificate shall state that her confinement would likely take place within six (6) weeks.[31] She is entitled to twelve weeks maternity leave. A woman on maternity leave is entitled to salary/wages of not less than fifty percent if she had been in the employment of her employer for a period of six months prior to her confinement.[32] In addition to that, an employer is prohibited from dismissing a female employee when she remains absent for a period longer than twelve weeks as permitted by law and any other period as may be prescribed due to an illness which is certified by a registered medical practitioner to have arisen out of her pregnancy, or confinement, to render her unfit for work.[33]

b. Nursing mothers: A nursing mother is entitled to half an hour twice a day for the purpose of nursing her child during working hours.[34] The provision of the law on nursing of a child applies to an legitimate or illegitimate child.[35]

The Labour Act's provision on maternity leave and nursing of children is commendable, though, the period of maternity leave may not be sufficient to a woman who had multiple birth which may require more time to nurse the newborn babies. This can pose as a challenge to women. Some may consider resignation to aid recovery and nurturing of the babies especially in a workplace that is already hostile. More so, the Labour Act only prohibits dismissal during maternity leave. It does not prohibit any other disciplinary action against a female worker who is on maternity leave. It would have been appropriate to provide that a female worker should not be subjected to disciplinary actions during maternity leave and that it should be postponed to a period after maternity leave. This does not in any way mean that the female worker should be precluded from facing disciplinary actions when she is found wanting for violating the rules of conduct in a workplace.

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[27] DT Eyongndi 'Casual Employees Under Nigerian Law: Matters Arising' <https://www.academia.edu/33313972/CASUAL_EMPLOYEES_UNDER> accessed 30 June 2021.
[28] Labour Act (Amendment) Bill 2019.
[29] Labour Act (n 11) section 54(1)(a)(b).
[30] Ibid, section 54(1).
[31] Labour Act (n 11) section 54(1)(a)(b).
[32] Ibid, section 54(1)(c).
[33] Ibid, section 54(4)(b).
[34] Ibid, section 54(1)(d).
[35] Ibid, section 54 (5).

1.3.2 Discriminatory Provisions against Women in the Labour Act

Apart from the protection accorded to pregnant and nursing mothers in a workplace, there are discriminatory provisions against women in a workplace in the Labour Act. The provisions that are discriminatory shall be briefly analysed hereunder:

a) Section 34(1) of the Act empowers men who are recruited for service to take members of their family not exceeding two wives and children below sixteen years to their place of employment. Women are also recruited for same service yet, there is no equivalent provision in the Labour Act empowering women who are also recruited for service to take their husbands and children to their places of employment.

b) Section 55 of the Act prohibits women from working night shifts except women employed as nurses and women occupying managerial positions. It applies to private and public workplace. This provision of the law is discriminatory as it implies that men and women are not equal. It is an infringement on the right of women to work of their choice.

c) Section 56 of the Act provides that women are prohibited from being employed in an underground mine except the following: women holding management positions,[36] women employed in health and welfare service,[37] women who in the course of studies spend a period of training in underground parts of a mine[38] and women who occasionally have to enter the underground parts of a mine for non- manual occupation.[39] This provision restricts women. The Constitution posits equality before the law.[40] Despite the constitutional provision, men are authorised by law to work in any underground mine without any restriction. This provision does not regard women who desire to work in an underground mine. It restricts women from engaging in occupations of their choice.

d) Section 57 of the Act authorises the Minister of Labour and Productivity to make regulations prohibiting and restricting the employment of women in any particular type or types of industry or other undertakings or in any process or work carried on by such undertaking. This provision contravenes the provisions of the Constitution which prohibit discrimination of any form.[41] It is also against the stipulations of CEDAW which provides that a woman has a right to free choice of profession and employment.[42] The provision of the Labour Act is a restriction of this right.

1.4 Operation of CEDAW in Nigeria

Nigeria prior to the amendment of the 1999 Constitution was a dualist state. Being a dualist state implies that international laws cannot have the force of law unless it is domesticated by the legislature. The constitutional provision on application of treaties is to the effect that no treaty shall have the force of law in Nigeria except it is enacted into law by the National Assembly.[43] Where

[36] Labour Act (n 11) s 56(2)(a).
[37] Ibid, section 56(2)(b).
[38] Ibid, section 56(2)(c).
[39] Ibid, section 56(2)(d).
[40] CFRN 1999 (n 7) s 17(1)(2).
[41] CFRN 1999 (n 7) section 42.
[42] CEDAW (n 12) Article 11(1)(c).
[43] CFRN 1999 (n 7) section 12.

it is not enacted into law, the courts will not uphold it. This position of the law was applied in the case of *Abacha v Fawehinmi*.[44] wherein the court held that:

> *Where however, the treaty is enacted into law by the National Assembly, as was the case with the African Charter which is incorporated into our municipal law (i.e domestic) law by the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. 10 Laws of the Federation of Nigeria 1990 (hereinafter is referred to simply as Cap. 10), it becomes binding and our courts must give effect to it like all other laws falling within the judicial power of the court.*

Therefore, a party relying on any International treaty must place evidence of domestication of same before the court. Its proof is very vital.

With the amendment of the Constitution, International conventions/ treaties can be upheld by the NICN once it is ratified by Nigeria. The Constitution provides as follows:

> *Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matter connected therewith.*[45]

In addition to the above section of the Constitution, it is provided that the NICN is empowered to entertain matters relating to unfair labour practices or in International Best Practices IBPs in labour, employment and industrial relations[46] and in matters relating to the application or interpretation of international labour standards.[47] International labour standard (ILS) contain the basic principles and rights at work that frame the ILO's policy work and advice.[48] They are drafted into conventions and they are binding on member states that ratify them.[49] The principles of ILS are: Freedom of association and the right to collective bargaining, freedom from forced labour, and freedom from discrimination at work.[50]

By the provision of the Constitution on the jurisdiction of the NICN pertaining to IBPs and international labour standards, the NICN can apply unratified international labour conventions/ treaties. Thus, in the case of *Ebere Onyekachi Aloysius v Diamond Bank PLC*,[51] the claimant was employed by the defendant on the 5th day December, 2006 and his employment was confirmed on the 27th day of November, 2007. In June, 2006, the claimant was queried for an alleged breach of internal banking rule with the intention to commit fraud. The claimant was invited to appear before a disciplinary panel set by the Defendant. Subsequently in September 2009, the claimant was suspended without pay. In January, 2009, the claimant was served with a letter of termination of employment wherein no reason was stated for the termination of employment. Also, the report of

[44] [2000] 4 SCNJ 401 SC.
[45] CFRN 1999 (n 7) section 254C (2).
[46] Ibid, section 254(C)(1)(f).
[47] Ibid, section 254(C)(1)(g).
[48] SDGNOTE International Labour Standards <http://www.ilo.org/wcmsp5/groups/public/---dgreports/> accessed 2 May 2021.
[49] *Ibid*.
[50] *Ibid*
[51] [2015] 58 NLLR 92.

the disciplinary committee was not disclosed to him. The court in its decision relied on the Termination of Employment Convention, 1982 (No.158) and Recommendation No. 166 and held that:

> *The need to base termination of employment on a valid reason is the cornerstone of the convention's provisions. This is the global position on employment relationship now. It is the current international Best Practice. Although this convention is not ratified by Nigeria; but since March 4, 2011 when the constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, came into effect, this court has the power under the constitution to apply International Best Practice and International Labour Standard to matters like this by virtue of section 254C(1)(f) and (h) of the Constitution as amended.*

By implication, the ILS and IBPs are found in the ILO conventions which may be ratified or not. A party relying on an unratified convention or treaty must plead and prove the convention he intends to rely on.[52] However, the court out of its volition can apply an international labour convention without a party pleading or proving same. With the above position, a controversy exists as the Nigerian constitution provides that domestication is required for the purpose of application of international treaties/conventions and at the same time, with regard to employment matters, ratification is the requirement. A similar situation once arose in Kenya though in this case the constitution was silent on the application of international law. It was relied upon where there was no conflict of law between the national law and the international treaty.[53] The matter was laid to rest upon the amendment of the Kenyan Constitution and the recent position of the law on application of international law is ratification.[54] Nigeria is yet to resolve this controversy as there are two procedures for application of international conventions; domestication and ratification.

The National Industrial Court Act (NICA), also has a provision authorising the court to apply IBPs in employment matters and what constitutes good or IBPs in labour or industrial relations is a question of fact.[55] Thus, the NICN, apart from the constitutional provision has the mandate to apply ILS or IBPs which may be found in ILO conventions whether ratified or not where an unfair labour practice is identified.

Where a claimant alleges a breach of or non-compliance with an international protocol, convention or treaty on labour employment and industrial relations, the claimant shall in the complaint and witness statement on oath, include, the name, date and nomenclature of the protocol, conventions or treaty; and proof of ratification of such protocol convention or treaty by Nigeria and the claimant shall be required to plead and prove the existence of the International Protocol, treaty or convention in line with the principles relating to proof of custom as provided in the Evidence Act.[56] This provision applies to parties who intend to rely on the provisions of the international labour

[52] RE Idaeho 'The Applicability of Unratified International Instruments in the Nigeria Labour Court' <https://papers.ssrn.com/sol3/papers.cfm%3Fabstract_id%3D3430648&ved=2ahUKEwjMr> accessed 29 April 2021.

[53] H. Omiti, The Monist Dualist Dilemma and the Place of International Law in the Hierarchy of Valid Norms under the Constitution of Kenya 2010 <https://ssrn.com/abstract=2099043> accessed 1 May 2021.

[54] The Independent Constitution of Kenya (as amended in 2010), Article 2(6).

[55] National Industrial Court Act, Cap N155 LFN 2004 (as updated) (NICA) section 7(6).

[56] National Industrial Court of Nigeria (Civil Procedure) Rules, 2017 Order 14A Rule 1(1) (a)(b) and Rule 1(2).

convention or treaty. This is for the purpose of putting before the court, proof of the conventions it intends to rely on.

The aforementioned provisions of the law; more particularly the opening words of section 254C(2) of the Constitution: 'notwithstanding anything to the contrary in this Constitution' has given rise to the application of the International conventions, treaty or convention without the need for domestication by the National Assembly. The requirement for application of same by the NICN is ratification and where an ILS or IBPs is found in an ILO convention, the court will apply its provisions.[57] CEDAW has been ratified by Nigeria thus, it can be applied by the NICN.

CEDAW was ratified by Nigeria in 1985, as such it has the force of law in Nigeria. It contains provisions that protects women against discrimination in employment matters.[58] Its provision on discrimination against women in labour/ employment is explained below:

1. The right to work as an inalienable right of all human beings:[59] Women have the right to work. CEDAW posits that women's right to work is an inalienable right. Inalienable right refers to the rights that one cannot be deprived of. One is entitled to such rights by virtue of being a human being.

2. Right to same employment opportunities:[60] This right is provided in CEDAW to eliminate discrimination in a place of work. This entails that women should be accorded same criteria with men for selection in matters of employment. This relates to the recruitment/hiring processes.

3. The right to free choice of profession and employment, the right to promotion, job security:[61] CEDAW provides that states parties should curb out discrimination; ensuring that women can freely choose a profession of their choice, they are promoted when they are due and they have job security. The condition of service should apply equally to workers without discrimination. A woman has a right to receive vocational training and retraining to equip her with the technical knowledge in her place of work. The provision of the Labour Act prohibiting women from night work and underground work is a contravention of this provision of CEDAW. `

4. The right to equal remuneration:[62] This right includes benefits and equal treatment in respect of work of equal value and equality of treatment in the evaluation of the quality of work.

5. The right to social security:[63] This applies to cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work and the right to paid leave.

[57] *EbereOnyekachi Aloysius v Diamond Bank PLC* (n 51).
[58] CEDAW (n 12) Article 11.
[59] Ibid Article 11(1)(a).
[60] Ibid 11(1)(b).
[61] Ibid (n 12)11(1) (c).
[62] CEDAW (n 12)11 (1) (d).
[63] Ibid, Article 11(1) (e).

6. The right to protection of health and to safety in working conditions:[64] This includes the safeguarding of the function of reproduction.

7. States Party are to take measure to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.[65]

8. To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.[66]

9. To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities. [67] This provision when complied with, will aid women who combine their reproductive roles with their occupation.

10. To provide special protection to women during pregnancy in types of work proved harmful to them.[68] The import of this provision is that the employer owes the pregnant female worker a duty of care which if neglected, would lead to negligence and in that situation the provisions of ECA will apply to remedy the damage caused.

The CEDAW Committee[69] expanded the scope of Article 11 to include sexual harassment. Therefore, discrimination against women in matters of employment include sexual harassment. Affirming sexual harassment as discrimination in a workplace in Nigeria, the National Industrial Court held that sexual harassment is a form of discrimination based on gender in CEDAW.[70]

Despite the ratification of this Convention, there are still in existence, discrimination against women in workplaces. There are also discriminatory provisions in the Nigerian law against women in employment matters which are not in compliance with the Constitution[71] and CEDAW[72] which have anti-discriminatory provisions. The NICN in exercise of its role in the application of International Convention / treaties frown at discrimination against women. For instance, in the case of *Mrs Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 ors*,[73] the claimant's contract of employment was terminated because she was pregnant. The court held that the termination of the contract of employment was a violation of her right against discrimination.

Also, in the case of *Ejike Maduka v Microsoft Nigeria Ltd & Ors*,[74] the court awarded damages for sexual harassment. In the case, an employee of Microsoft Nigeria brought an action against the

[64] Ibid, Article (1)(f).
[65] Ibid, Article 11(2)(a).
[66] Ibid, Article 11(2) (b).
[67] Ibid, Article 11 (2) (c).
[68] Ibid, Article 11(2) (d).
[69]CEDAW General Recommendation 19 (n 18).
[70]*EjikeMaduka v Microsoft Nigeria Limited* [2014] 41 NLLR (Pt. 125) 67.
[71] CFRN 1999 (n 7) section 42.
[72] CEDAW (n 12) Article 11.
[73] [2012] 27 NLLR (pt. 76) 110 NICN.
[74]*EjikeMaduka v Microsoft Nigeria Limited* (n 69).

country manager of Microsoft corporation and her immediate line manager alleging that she had been consistently sexually harassed by the country manager and by her refusal to accept his advances, her contract of employment was terminated despite her complaints to the 4th respondent who did nothing about the acts of the 3rd respondent. She relied on General Recommendation No.19 on Violence Against Women of the UN committee on the Elimination of Discrimination Against Women (CEDAW Recommendation 19). The court held that the actions of the country manager amounts to sexual harassment within the meaning of CEDAW Recommendation 19 and as such violated the applicant's fundamental right against discrimination. The court held the respondents vicariously liable for the action of the third respondent which amounts to sexual harassment.

Discriminatory provisions of the law against women can be found in the Order made pursuant to Nigerian Drug Law Enforcement Agency Act.[75] Under the Order, all female applicants must be unmarried at the point of recruitment and shall remain unmarried for a period of not less than two years in service.[76] In addition to the provision, any unmarried woman in the service who is desirous of getting married must apply in writing to the Chairman/ Chief Executive, seeking for permission to marry and the application must state the particulars of the person she intends to marry.[77] The provisions of the NDLEA Order is discriminatory against women as it prohibits enlistment of married women.

1.5. The Jurisdiction of the National Industrial Court of Nigeria (NICN) in Matters Relating to or Connected with Discrimination Against Women in a Workplace.

The NICN has the jurisdiction to entertain matters relating to or connected with discrimination in a workplace[78] and appeals on fundamental human rights contained in chapter IV of the constitution and criminal matters lie to the Court of Appeal as of right and other civil (employment) matters are with the leave of the court of Appeal.[79] It is clear that the court has jurisdiction in employment/ labour matters (inclusive of workplace discrimination), however, one will wonder if the court has jurisdiction in pre-employment matters, that is, matters that arise prior to the existence of an employment relations. An instance of such matters is discriminatory acts against women during the recruitment/ hiring process. One will think that since there is no contract existing between the parties, the NICN has no jurisdiction. There is therefore the need to analyse the scenario that constitute pre-employment matters and the provisions of the laws related to it.

During the recruitment of a person, there is no relationship of an employer and employee. The person who seeks an employment is an applicant and the person hiring is an employer. Women applicants face discrimination during the recruitment process. There is no provision in the Labour Act or any other law in Nigeria specifically regulating the relationship that exist between an applicant and an employer in the course of recruitment.

The provisions of the Constitution, NICA and the National Industrial Court Civil Procedure Rules have provisions on the appropriate court that can entertain matters related to labour/ employment

[75] Nigerian Drug Law Enforcement Agency Order, 2002.
[76] NDLEA Order, Article 5(1).
[77] Ibid, Article 5(2).
[78] CFRN 1999 (n 7) s 254C(1)(g).
[79] *Skye Bank PLC v Iwu*[2017] 16 NWLR (pt. 1590) 24.

and precisely workplace discrimination and sexual harassment. The NICN by virtue of the Constitution has jurisdiction in matters relating to or connected with any dispute arising from discrimination or sexual harassment at a workplace.[80] NICA also vest the NICN with exclusive jurisdiction in civil matters relating to labour.[81] The procedure rules for workplace discrimination and sexual harassment claims are contained in the National Industrial Court Civil Procedure Rules[82] and precisely, Order 14 (1)(1)(d) stipulates that it is sexual harassment if an employer undertakes to influence or influences the process of employment of a job applicant in exchange for sexual favours. In addition to the provisions of the law, the NICN in *Mr. Ahmed Ishola Akande v Lilygate Nigeria Ltd*,[83] held as follows:

> *As an additional point, in labour relations, labour rights inure at three levels: pre-employment rights i.e those rights that arise prior to the start of an employment, e.g rights inuring to job applicants; employment rights i.e rights arising during the pendency of an employment; and post-employment rights i.e rights inuring at the end of the employment such as pension rights.*

The combined effects of the provisions of sections 254C(1)(g) of the constitution, 7(1)(a)(i) of NICA, order 14 of the National Industrial Court Civil Procedure Rules and the decision in *Mr. Ahmed Ishola Akande v Lilygate Nigeria Ltd,* is that the NICN has jurisdiction in pre-employment matter that may arise between the job applicant and the employer. Thus, job applicants have labour rights that are protected by the law. They can seek a legal redress if they believe that there were discriminatory acts in the course of the recruitment exercise and every document used during the recruitment exercise will be relied upon.

Generally, the NICN apply unfair labour practice in workplace discrimination and sexual harassment matters and award damages and in appropriate cases, apply vicarious liability to deter discriminatory acts in a workplace. The damages awarded are outside the sphere of 'damages' as construed under the Nigerian law which is restricted to the period within which notice would ordinarily be served on an employee. The court has the jurisdiction to apply unfair labour practice by virtue of the CFRN.[84] An instance of a case where the NICN applied unfair labour practice pertaining to workplace discrimination against women and awarded damages outside the sphere of damages construed under the Nigerian law is the case of *Ejike Maduka v Microsoft Nigeria Ltd & Ors*.[85]

In Nigeria, there are hardly discriminatory recruitment lawsuits. This can be viewed from two perspectives. Firstly, some applicants can hardly cater for their needs as such, they cannot afford litigation against the employers before the NICN. Secondly, there is this belief that the employer is the owner of the enterprise and can employ any one he chooses and can do anything or say anything because he is the employer. This boils down to the fact that the job applicants are helpless. Lastly, there is poor enforcement of the laws generally in Nigeria.

[80] CFRN 1999 (n 7) section 254C(1)(g).
[81] NICA (n 55) section 7(1)(a)(i).
[82] National Industrial Court Civil Procedure Rules (n 57) Order 14.
[83] Unreported suit no. NICN/LA/40/2012 Judgement delivered on 7 April, 2016.
[84] CFRN, 1999 (n 7) section 254C(1)(f).
[85] *EjikeMaduka v Microsoft Nigeria Limited* (n 69).

In other jurisdictions like the United States of America, there is in existence the U.S Equal Employment Opportunity Commission.[86] The commission was established to enforce federal laws that prohibit workplace discrimination with the aim of tackling workplace discrimination of any sort. The commission monitors, investigates, resolves or files suits against employers to protect the rights of job applicants and employees.[87] If there is a commission of this sort in Nigeria, with vigorous monitoring of workplaces, paying more attention on the recruitment/ hiring process and survey of women participation in a workplace, workplace discrimination against women will be reduced.

1.6 Recommendation and Conclusion

Women in Nigeria do not enjoy equal rights with men. They face workplace discrimination during the hiring/ recruitment exercise, the pendency of the contract of employment and upon termination of the contract of employment despite the provisions of the law. The Labour Act, which is the principal labour legislation, contain discriminatory provision against women in a workplace and it does not comply with the provisions of CEDAW. Efforts to balance the inequality at a workplace is basically done by NICN. It applies International Conventions/treaties and ILS and IBPs to curtail discrimination against women.

It is recommended that the provisions of the Labour Act; sections 34(1), 55, 56, 57, 58 and other Nigerian legislations such as Article 5 (1) and (2) Nigerian Drug Law Enforcement Agency Regulations that are discriminatory against women in a workplace should be amended to be in conformity with the provisions of Article 11 of CEDAW to promote and protect the rights of women in a workplace.

It is further recommended that there should be established an Equal Employment Opportunity Commission to enforce federal laws that prohibit workplace Discrimination against employees and job applicants. Its coverage should be employment (workplace) with five employees. The commission should be established at the state level too to enforce the state laws. All complaints pertaining to workplace discrimination against employees and job applicants should be handled by the commission. The commission should have the capacity of ensuring equality of rights in employment matters in Nigeria. The duties of the commission should be to monitor, investigate matters related to workplace discriminations and resolution of such matters or filing of the matter before the National Industrial Court against the employers in a bid to curtail workplace discrimination. A model of this commission is the U.S Equal Employment Opportunity Commission (EEOC). EEOC enforces the federal laws that combat workplace Discrimination against employees and job applicants in the United States of America.

[86] US Equal Employment Opportunity Commission, 'Intake Handout' <https://equalitymi.org/wp-content/uploads/2016/08/Intake-Handout> Accessed on 29 June, 2021.
[87] *Ibid.*