Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria

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Abstract
Gender inequality is a social problem facing women all over the world and is a barrier to human development. The United Nations commits to achieving gender equality and empowering women and girls and have adopted the Sustainable Development Goals to achieve gender equality by 2030. Nigeria, a Member State of the United Nations has ratified international and regional instruments which advocate for the protection and promotion of the rights of women and girls. Though some progress has been made to reduce inequality, discrimination remains a problem to women and is exacerbated by factors such as culture, religion, social practices and discriminatory laws. This study seeks to add to the discourse on gender inequality in Nigeria and examine the effectiveness of available domestic and international provisions against sex discrimination when considered against ingrained cultural attitudes, beliefs and discriminatory laws. The study found that among other determinants, culture and religion were constant features in the different forms of discrimination Nigerian women face and they were the primary reasons the proposals to pass gender equality laws were opposed and failed. The study proposes the need to adopt non-policy measures such as education and awareness-raising as additional measures to eliminating discrimination and promoting equality.

Keywords
Gender inequality, sex discrimination, Nigeria, laws, non-policy measures, culture, religion and patriarchy

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Introduction

Background

Historically, women have been subjected to discrimination and excluded from equality-based treatment on the belief that they belong to an inferior gender, lack rationality and need to be supervised (Fredman, 2002). Evidence from literature suggests that women were legally placed under the authority of men especially in marriages where they are regarded as minors and were precluded from participating in politics. It was believed that her natural position was that of a social and domestic life. Gender inequality is a social problem to the female gender and in many countries, it remains enshrined in their laws (Fredman, 2013). The lives of women in the traditional African society is not any better than their western counterparts. Women in Africa are subjected to unequal treatment and are denied access or unequal access to economic opportunities, status, power and privileges in society (Kangiwa, 2015). The inequality women face in Africa and indeed Nigeria is exacerbated by many factors such as the various cultures found among the many ethnic groups that exist, social practices, patriarchy and religion.

The Nigerian cultural system has designed and organized the society based on gender which prescribes that men are heads of families and women are subordinate to them and must respect and obey their leadership. Roles and responsibilities have been created based on this division with men responsible for the financial upkeep of the family and women for taking care of the children and domestic work. When individuals deviate from these societal ascribed roles, culture is used as an instrument to subjugate, intimidate and ensure compliance (Uchem, 2001). Cultural practices such as male gender preference and early marriages encourage and enhance the discrimination of women while denial of inheritance rights impact on their economic opportunities.

Patriarchy is another factor that exacerbates the inequality of the female gender in Nigeria. Nigeria operates a patriarchal system of stratification that ascribes power to men as heads and leaders in society and families. It provides material advantages to men in terms of inheritance rights and ownership of land thereby economically empowering a man and deprives women resources making them economically dependent on men (Makama, 2013). Makama argues that gender differentials in inheritance rights and legal adulthood sets the framework for structural gender inequality in families and society where men are trained for leadership activities and women are constrained to domestic activities which affect their self-worth and confidence later in their adult life and career. Patriarchal system normalizes the fact that men are leaders in the homes and society and therefore there is a tendency that anywhere a man is seen in a position of power and leadership, it will be viewed as normal while the opposite will be an anomaly.

In addition to culture and patriarchy, religion is another factor that impacts on inequality women face in Nigeria. The predominant religions in Nigeria hold that God created men leaders in families and society and as a result, women are expected to be subordinate and submit to their leadership. Individuals are indoctrinated with these religious views through socialization and education to accept them as natural and a divine order from God. Boys are therefore raised to believe that God has ordained them to be heads in their homes and girls are raised and trained to be good and virtuous wives.
and to learn to submit to their husbands. Religion was found to be a major factor in defining the responsibility of men and the association of men to leadership (Christian Aid, 2015). Due to this dominance of religion in an African’s life, it has been used as an effective tool for subordination of women. The predominant religions in Nigeria hold that God created men leaders in families and society and as a result, women are expected to be subordinate and submit to their leadership.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) periodic reports (1998 and 2003) revealed that discrimination is ingrained in the Nigerian culture and attitudes and being a traditional society, emphasis is placed on the role of women as that of a homemaker and baby factory. Women are relegated to the background and placed in stereotypical roles which are instilled on them as children and they grow up to accept them as normal. The report claims that the Nigerian government is willing to find ways in which to eliminate discrimination in the community.

In keeping to its commitment to eliminate discrimination, the government put some measures in place through the enactment of laws and ratifying international conventions that promote equality and protect the rights of women. However, despite years of these legal provisions, women continue to be victims of discrimination and are underrepresented in all facets of society. Women account for nearly half of the population at 49.2% but they are underrepresented in the workforce with only 38.16% in the state civil service. The report from National Bureau of Statistics (NBS) shows that the literacy level of women stand at 59.3% compared to 70.9% of men and in positions of power and decision making, women are under-represented with 5.8% in the National Assembly; 29.4% in the Federal Courts and 15.4% of professors in universities and women were generally under-represented in high-ranking government administrators with decision making powers.

The aim of this paper is to examine the available legal provisions against sex discrimination in Nigeria and consider the effectiveness of these provisions. It will analyse domestic and international provisions and assess to what extent they can protect women’s rights when considered against ingrained cultural attitudes, beliefs and discriminatory laws. The central aim of this paper is to highlight the inadequacy of sex discrimination provisions in Nigeria to meet their objectives and the need to adopt non-policy measures as preliminary steps to eliminating discrimination and promoting equality.

**Forms of discrimination**

There is a difference of opinion on the origin of subordination of women in traditional African societies like Nigeria. Some writers are of the view that equality existed between men and women and that subordination of women was a result of colonization which brought with it Christian and Islamic religions that introduced male centred institutions (Awe, 2001; Okoh, 2002; Uchem, 2001). Some writers on the other hand disagreed with this view but believed that subordination of women existed in Africa prior to colonization because of the inherent discriminatory culture and practices. Women’s positions were only made worse by the introduction of colonialists’ religions which acted as an additional instrument of subordination of women (Uchem, 2001). Nonetheless, there is
wide-spread discrimination against women in Nigeria and the following sub-sections will briefly highlight some of the discriminatory practices women in Nigeria face.

**Discriminatory laws and customs**

With a population of over 200 million and over 250 ethnic groups (CIA, 2020), Nigeria has a diverse cultures and traditions. Different customary laws and cultural practices obtain in different communities and many of these are harmful and discriminatory towards women. Some of these customary laws and customs include widowhood practices, wife inheritance, female disinheriance, and female genital mutilation among others (Ifemeje and Umejiaku, 2014). In some ethnic groups, widows are subjected to inhumane treatment and are expected to undergo some rituals to absolve them of any guilt in the death of their husbands such as drinking the water used to wash the corpse, or shaving their hair, sitting and sleeping on the bare floor to help ward off the evil spirit of their deceased husbands (Durojaye, 2013; Ifemeje and Umejiaku, 2014). In some communities, their movements are restricted, and they are banned from economic activities which affect their livelihood while in others, the demise of their husbands does not end the marriage, but they are inherited by their brother-in-law as part of the deceased estate. Female genital mutilation (FGM) is also a discriminatory culture practiced in many societies in Nigeria on the belief that it preserves female virginity, reduces promiscuity in women, prevents still birth and enhances male sexual performance (Ifemeje and Umejiaku, 2014).

Some Customary and Sharia laws are discriminatory against women for example, under the Sharia law, punishment given to women in adultery cases is disproportionate to that given to men where a woman can be punished for adultery but her co-adulterer can be let off if he swears an oath of innocence (Ifemeje and Ogugua, 2012). The Penal Code also authorizes a man to beat his wife for the purposes of correcting her. Most customary laws are patrilineal in nature whereby land and landed property are inherited by male heirs thereby disinheriting women from their deceased husbands’ or fathers’ properties. However, the Court of Appeal in 

**Child marriages**

Child marriage is a problem in Nigeria with the country ranking 11th highest in the world. 15.7% of girls in Nigeria are married before the age of 15 years and 43.4% are married before the age of 18 years compared to 3.2% of boys (UNICEF, 2020). Child marriages in Nigeria can be linked to many factors such as cultural, social and religious norms, and poverty. It is considered dishonourable for a bride not to be a virgin on her wedding night (Fayokun, 2015) and to preserve the family honour and prevent unwanted pregnancies, girls are given out in marriages at a very young age. The prevalence of child marriages in the North is because of the Islamic religious norms that encourage girls to get married before or upon reaching puberty (Fayokun, 2015). Poverty is also a cause of early marriages where families give their daughters out so they can use the little
resources left to train the remaining children (Nnadi, 2014). The effect of child marriage is early pregnancy which poses health risks for girls and denies them an education which in turn hinders their economic freedom as adults.

Nigeria ratified the Convention on the Rights of the Child in 1991 and domesticated it in 2003 through the Child Rights Act 2003 (CRA) to give effect to the obligations contained in the convention and the African Union Charter on the Rights and Welfare of the Child 1990 (Okoye, 2011). The CRA prohibits the betrothal and marriage of a child. Despite these provisions, child marriages persist, and section 29(4)(b) of the Constitution of the Federal Republic of Nigeria 1999 (the Constitution) deems any woman of any age who is married to be of full age.

**Access to education**

The right to education is a fundamental human right enshrined in Article 26 of the Universal Declaration of Human Rights (UDHR) and other international conventions. It recognizes the right to free and compulsory basic education for all, however primary school enrolment of girls in Nigeria in 2016 was 47.5% compared to 52.5% of boys. It is believed that the inequality in education in Nigeria was due to the colonial educational systems which alienated women from educational and economic activities with fewer schools set up for girls than for boys (Makama, 2013; Ogunyemi, 2005). Cultural and socio-economic factors and patriarchal attitudes about the role of women have been indicated as some of the reasons for inequality in education and the high illiteracy rate for women (Makama, 2013).

Nigeria ratified and domesticated the African Charter on Human and People’s Rights (the Charter) which guarantees right to education. The government commits to educating the girl child by expressing through its National Policy on Education 2004 that access to education is a right to all Nigerian children regardless of their sex, religion or ability and made provisions for free, compulsory and universal primary education in its Constitution. It also enacted the Compulsory, Free Universal Basic Education Act 2004 and with the CRA guarantees children a right to basic education (Isokpan and Durojaye, 2018). This right however cannot be enforced because the right to education is non-justiciable under the Constitution. This was determined in SERAP v Nigeria where the ECOWAS Court of Justice held that the child has a justiciable right to education by virtue of the Charter. However, due to the supremacy of the Constitution, this decision cannot stand as it is inconsistent with the Constitution and per the decision of the Supreme Court in Abacha v Fawehinmi the Charter cannot be superior to the Constitution (Isokpan and Durojaye, 2018). Though the government has made efforts to prioritize basic education, inequality in education persists and efforts made to develop education in Nigeria have failed to produce impressive results because of lack of political will and corruption (Okoroma, 2006).

**Gender-based violence**

Violence against women or Gender-based violence (GBV) is a social phenomenon that mainly affects women and girls. It is a private or public act of gender-based violence that
results in physical, sexual or psychological harm to women (United Nations, 1993). GBV is a form of discrimination against women rooted in gender inequality and acts as a barrier to equal participation of women in social, economic and political life. According to the World Bank, one in three women have experienced GBV in their lifetime with 35% experiencing physical or sexual violence from an intimate partner or non-partner (World Bank, 2019).

The most common acts of violence against women in Nigeria are harmful traditional practices, domestic violence, physical violence, sexual violence, socio-economic violence, forced marriages and female genital mutilation (UN News). Cultural and religious norms have been advanced as reasons why women condone and tolerate these types of violence because they are expected to endure any vices in their marriages or for fear of being ostracized (Ilika and Ilika, 2005). Studies have found that more females experience both physical and sexual violence than males and young age, drinking and smoking have been attributed to perpetration (Iliyasu et al., 2011; Oladepo et al., 2011).

To address GBV, the government passed the Violence Against Persons Prohibition Act 2015 (VAPPA) which prohibits harmful traditional and widowhood practices, FGM and all forms of violence against persons. GBV however remains a problem for the female gender and is compounded by the nonchalant attitude of the police to investigate. As recently as May 2020, a university student who went to read in a church was raped and murdered and it took an outrage from the members of the public for the police to investigate (Guardian, 2020). It is this sort of nonchalant attitude of the police to investigate and prosecute, and sometimes victim blaming that continue to silence women and encourage offenders.

Sexual harassment at work

Sexual harassment is an institutionalized social problem because of the control men have over women’s survival in the home and at work (MacKinnon, 1979). Women are vulnerable to sexual harassment at work because they need their income for survival and having few job alternatives are pressured to tolerate sexual advances from their employers or their superiors. In a patriarchal society like Nigeria, acts of sexual harassment are usually condoned and used as a tool to keep women subordinated to men and to preserve men’s traditional dominance over women (Ige and Adeleke, 2012; Ladebo, 2003). Incidents of sexual harassment are not viewed as such because men are encouraged to pursue their sexual interest in women in an aggressive manner and women are conditioned to accept it as normal (Johnson, 2010). Most women do not report sexual harassment either because they are traumatized by their experience or do not consider it as sexual harassment (Yusuf, 2008). Women fail to report because of fear that they would be blamed, and it could damage their reputation and bring shame upon their families (Johnson, 2010). Women employ different strategies to prevent sexual harassment such as ignoring or avoiding the harasser or making light of the situation by making jokes about it (Akinfala and Komolafe, 2017).

The National Assembly recently passed a Sexual Harassment Bill which has been sent to the House of Representatives for consideration (CNN, 2020). The Bill seeks to check incidences of sexual harassment and protect students from sexual harassment in Tertiary
Institutions. It defines what constitutes sexual harassment and prescribes a jail term for offenders for different offences ranging from 2 years up to 14 years. The Bill excludes mutual consent as a defence and dispenses with the requirement to prove intent on the part of the accused (Sexual Harassment Bill, 2019). The Bill is a welcomed development in the protection of women against sexual harassment, however, this is limited in scope because it only protects female students in tertiary institutions, and protection is not extended to other places women could face harassment such as the workplace or in the provision of services.

**Access to senior management positions**

Acker argues that organizations are organized along the lines of gender and structured to represent the interests of men (Acker, 1990) therefore women face challenges within organizations. Evidence shows that the top challenge working women across the world face in paid jobs is the difficulty in balancing work lives with family lives. This stems from societal expectations that women are the primary caregivers, and this affects their career opportunities as well as restrict them from going into leadership positions (ILO-Gallup Report, 2017). Nigerian women’s economic opportunities are further hindered in the private sector with employers demanding they do not get pregnant within the first 3 years of employment (Abara, 2012) and single mothers are denied paid maternity leave because of their marital status.

Nigerian women make up nearly half of the population and are underrepresented in the workforce. The number is less when their representation in senior roles or power and decision-making roles are considered with 23.5% of top management executives in banks (Okongwu, 2017) and 29.4% of judges are women. In addition to the difficulty of balancing family lives with work lives, some factors identified that further restrict women in Nigeria from participating in senior roles are culture, patriarchy and religion (Eboiyehi et al., 2016; Kiamba, 2008). The two major religions in Nigeria recognize the superiority of men over women and uphold the expectations that men are heads and leaders both in homes and society. Patriarchy enforces these norms that view men as leaders and fosters female subordination while culture demands that men should be breadwinners and women should be restricted to the homes.

These traditions and gender division of roles are practiced in individuals’ homes and instilled in a child from an early age which they grow to accept as normal. As the cultural context of an organization is derived from the cultural context of society (see Gherardi and Poggio, 2001), these norms and values are transferred and reproduced in organizations thereby keeping women from participating in leadership roles. A woman’s perception of societal expectations of her will consequently influence her choice of career, her career goals and aspirations leading her to make career decisions that will accommodate her primary role of homemaker thereby avoiding senior roles (see Hakim, 2006).

**Participation in politics**

Women’s participation in politics in Nigeria is extremely low with 5.8% of senators in the National Assembly and 9% of chairpersons at the local government levels (NBS,
Nigeria remains one of the lowest ranking countries in Africa in terms of rate of participation of women in politics (WNP, 2019). Efforts have been made by the government to see an increase in female participation in politics such as establishing offices and funds to enhance female participation. Other efforts include the adoption of National Gender Policy (NGP) in 2006 to eradicate poverty, achieve gender equality and political empowerment for women and encourage inclusiveness in the process of governance. The NGP recommends 35% of female participation in both elective and appointed public service positions above 30% advocated by the World Conference on Women in Beijing (Oluyemi, 2016). The policy if implemented will see a substantial improvement in the lives of women’s socio-economic and political conditions, however, these have not been achieved (Amadi, 2017). The NGP Strategic Framework (Implementation Plan) (2008) shows that policies and measures set up to support gender equality and women empowerment have not been successful in improving political representations and appointments for women (Amadi, 2017). These efforts have failed to see an increase as a result of barriers such as patriarchy, religion, culture, electoral violence and economic situations which exclude women from participating in politics (UN Women, 2019).

Study: Legal protection in Nigeria

Nigeria is committed to eliminating discrimination and has ratified international instruments and made provisions under its national laws to achieve this objective. The legal framework that provides protection for women in Nigeria will be discussed under this section. This paper will consider these provisions and the challenges in protecting women.

Protection under CEDAW

Nigeria ratified the CEDAW in 1985 which was established to bring into focus and promote women’s rights. The Convention affirms that discrimination against women still exist and violates the principles of equality of rights (UN Human Rights). It covers the protection for civil and legal status of women and addresses the impact of cultural factors on gender relations such as cultural stereotypes, customs and norms which give rise to constraints on the advancement of women. It proposes a change in the traditional role of men and women in society and family to achieve full equality as well as eliminate prejudices and customary practices which are based on the idea that women are inferior. It also aims to target cultural practices that define the public domain as men’s sphere and domestic field as women’s domain. Nigeria also signed the Optional Protocol of CEDAW on 8th September 2000 and ratified it on 22nd November 2004. The Optional Protocol gives individuals and groups the right to complain to the Committee if the government fails in its obligation to implement the policies of the Convention. This stimulates governments to implement CEDAW to avoid complaints being made against them and encourages them to remedy violations by amending their legislation, ending discriminatory practices and implementing affirmative action measures (UN Women).

The CEDAW periodic report on Nigeria identified women’s perception of themselves, goals and expectation for themselves as a limiting factor in enforcing laws
intended to protect them from discrimination. Only enlightened and educated women who are aware of the laws and policies in place and know their self-worth can only hope to reap from the benefits under such laws. The report stated that to benefit from the Convention, focus should not only be on using laws and policies to eliminate discrimination but that other factors such as tradition, customs, religion, illiteracy and poverty should be tackled. The government set up panels to propose recommendations to bring existing laws in conformity with the CEDAW and other Conventions. Deliberate efforts were taken to economically empower women and they were given opportunities in political participation by increasing the number of female representations, which saw an increase in the House of Representatives and the Senate from 1.9% and 2.8% in 1999 to 6.9% and 6.4% in 2015 respectively (British Council, 2012).

Despite these efforts, the CEDAW is inadequate to protect women’s rights in Nigeria because it has not been domesticated. By virtue of section 12 of the Constitution, treaties which has been signed and ratified will not have any effect until a corresponding law is made by the National Assembly. This was confirmed by the Court of Appeal in MHWUN v Minister of Health and Productivity & ors that the provisions of an International Labour Convention cannot be invoked and applied by a Nigerian court until it has been re-enacted by an Act of the National Assembly (Onomrerhinor, 2016). Therefore, CEDAW though ratified does not have any effect and is inapplicable if there is no law addressing the purpose of the convention. Despite the status of CEDAW, the Court of Appeal recognized and applied it in Mojekwu v Ejikeme. In addition, section 254(c)(2) of the Constitution (Third Alteration) Act 2010, empowers the National Industrial Court of Nigeria to apply any ratified international convention, treaty or protocol relating to labour, employment, workplace or industrial relations in order to achieve international best practices (Onomrerhinor, 2016). Though this is a positive development, it does not apply outside of employment.

According to Ekhator (2019), apart from the Charter, international conventions have not had any positive impact or have had minimal impact on the lives of Nigerian women because they have not been domesticated. An attempt was made in 2007 to pass a CEDAW Bill in Nigeria but failed after going through the National Assembly (Iman, 2010). The Bill failed because there was a strong opposition to it by some law makers who believed it was anti-God and anti-family and as a foreign imposition, it was believed it would encourage abortion and sexual indulgence (Iman, 2010). This misconception was based on the belief that the subordination of women to men is a social order designed by God and a challenge to it is a challenge to God and the family institution. A further criticism of CEDAW was that it was insufficient to protect African women against discrimination and it had western values which did not address issues faced by rural women in Africa (Akiyode-Afolabi and Amadi, 2008).

Protection under the African Charter

Another international instrument ratified by Nigeria is the African Charter on Human and People’s Rights (the Charter) which was enacted in 1981 to protect the rights of people in Africa including women. The Charter provides a framework for the protection of human rights in Africa such as civil and political rights, socio-economic and cultural
rights, and individual and collective rights (Ekhator, 2015). The Charter was domesticated in Nigeria through the African Charter on Human and People’s Rights (Ratification and Enforcement) Act 1983 and is subject to the Constitution per the Supreme Court ruling in Abacha v Fawehinmi⁶ (Oba, 2004). The Charter however was found to be inadequate in addressing in detail the various discriminatory issues African women encountered in their daily lives such as being victims of harmful cultural and widowhood practices. It failed to address the problems of inequity in laws on property and customs in relation to inheritance and succession. The major limitation of the Charter is that the non-discrimination provision can only be invoked in relation to the implementation of a right under the Charter (Akiyode-Afolabi and Amadi, 2008).

To mitigate against the oversight, the Charter made provisions for the adoption of protocols to complement the agreement in areas it was found lacking. This led to the adoption of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) in 2003 ratified in Nigeria in 2004 to address the issues African women encounter by seeking to strengthen their control over their roles as mothers and in the community as a whole. The Protocol sought to ensure that women’s rights are protected so they could enjoy in full all their human rights. The Protocol covers a host of issues affecting African women including elimination of all forms of discrimination against women and elderly women, disabled women, women’s dignity and their human and legal rights, prohibition of cruel, inhuman and degrading punishment and treatment, widows’ rights and inheritance rights. The Protocol also makes provisions for State Parties to undertake to provide appropriate remedies for women whose rights have been breached to seek such remedies as would be determined by competent authorities provided for by the law (Akiyode-Afolabi and Amadi, 2008).

In efforts to eliminate discrimination against women, courts have taken a stand in using the Charter to declare as unconstitutional some of the customary practices that are discriminatory against women, see Mojekwu v Ejikeme.⁷ Furthermore, in 2017, the ECOWAS Court of Justice relied on the Protocol in the case of Dorothy Njemanze & ors v Nigeria⁸ to hold Nigeria responsible for violating the rights of women who were illegally arrested as suspected prostitutes. It was the first time a human rights institution used the Protocol to hold a state in breach of protecting the rights of women (O’Connell, 2019). It has been argued that the Charter has had a direct and positive impacts on women’s rights (Ekhator, 2019).

**Protection under national laws**

There are provisions within national laws from which women can seek protection for discrimination. This section will analyse some of the statutory provisions available to women if they become victims of discrimination.

**The Constitution.** *Section 42 of the Constitution* prohibits discrimination against a Nigerian citizen based on sex and other characteristics listed. It provides protection for any citizen of Nigeria from being subjected to restrictions by any law in force or by any government action. It goes further to prohibit privileges or advantages from being given to a Nigerian citizen by any law in force or executive or administrative action by reason
of the person’s sex. Women have used this section of the Constitution to challenge discriminatory practices against them.

In Dr. (Mrs.) Priye Iyalla-Amadi v the Nigerian Immigration Service (NIS), Mrs Iyalla Amadi challenged the Immigration Service’s policy that a woman needed her husband’s written consent before she could obtain an international passport. The Federal High Court relying on section 42(1) of the Constitution and Article 18(3) of the Charter to declare the policy unconstitutional. A similar decision was reached in Miss Yetunde Tolani v Kwara State Judicial Service Commission and ors where the appellant was dismissed from a newly appointed post of Magistrate Grade II because of a petition sent by an unknown man who claimed to be her husband. She was accused of lying about her marital status in a bid to secure employment when she was in fact a married woman, but her employer could not show how her marital status affected her ability to do her job. On appeal, allowing the appeal and setting aside the judgment of the lower court, Sotonye Denton-West, J.C.A expressed his doubt that the same measure would have been applied to a man similarly situated.

**Child’s Rights Act 2003.** The Child’s Rights Act 2003 (CRA) was enacted to give effect to the principles enshrined in the United Nations Convention on the Rights of the Child and the African Union Charter on the Rights and Welfare of the Child (Okoye, 2011). The Act enjoins individuals, public and private bodies to ensure that the best interest of the child is the primary consideration in all actions regarding the child. It entrenches fundamental rights for the child including the dignity of the child and access to free and compulsory basic education. It also provides protection for the child by prohibiting child marriages and betrothal, employment of children as domestic servants among others (Nzarga, 2016). As issues concerning children are outside the legislative capacity of the National Assembly, the states have to adopt and domesticate the CRA for it to be applicable. Of 36 states in Nigeria, only 25 states have adopted the Act with 11 predominantly Muslim northern states refusing to ratify it (ThisDayLive, 2019). Nwauche (2015) however believes that the Constitution protects a girl child from early marriage whether the CRA has been domesticated or not because an Islamic marriage can be deemed unconstitutional if it encroaches on her fundamental rights. The Supreme Council of Sharia protested against the CRA on the grounds that it is against the Muslim faith and culture and that it is unacceptable for a law to seek to establish equal inheritance rights between boys and girls and to accord legitimate and illegitimate children the same rights (Nzarga, 2016). Implementation in the states that have domesticated it continues to be a problem due to lack of awareness, lack of funds and conflict with the cultural values and customs of the people (Nzarga, 2016; Okoye, 2011).

**Violence against Persons (Prohibition) Act 2015 (VAPPA).** Women are protected under the VAPPA which was passed into law in 2015 in a bid to eliminate all forms of violence both in public and private life. The Act covers most forms of violence women face such as physical, psychological, sexual and socio-economic violence and criminalises practices such as FGM, domestic violence, abandonment, emotional, verbal and economic abuse. The Act expanded the meaning of rape to include not only the use of sexual organs in penetrating the female vagina but has included the use of objects in penetrating the
vagina, anus or mouth of another person without consent or with forced consent. The Act also makes rape non-gender specific unlike previous laws which restricted protection only to females (Akpoghome, 2016). This however neglects the fact that gender-based violence stems from the historic power relations between men and women and is a form of discrimination against women (Onyemelukwe, 2015). It has been indicated that the enactment of the Act is to comply with Nigeria’s obligation under CEDAW and the Maputo Protocol (Ekhator, 2019) through legislative transformation (see Ayeni, 2016).

The issues contained in the Act are outside the legislative capacity of the National Assembly and therefore will only be applicable in the Federal Capital Territory and the states that have adopted it. States that have not adopted it may have refused to do so due to religious or cultural reasons (Ekhator, 2019). The Act also fails to recognize that gender-based violence towards women is perpetrated because of their gender and should make specific provisions to protect women (Onyemelukwe, 2015).

**Discriminatory laws.** Despite the provision of section 42(1) of the Constitution, women still face discrimination because of the limited scope of section 42 and other discriminatory provisions contained in the same constitution and other national laws. The first limitation of section 42 is that the constitution provides protection against ‘any law in force in Nigeria or any executive or administrative action of the government’, which implies protection for people against discriminatory laws and executive actions but not from other sources such as from individuals, private organizations, institutions or discriminatory workplace policies or practices. This approach was adopted in the cases of *Madu v Onuaguluchi* and *Onwo v Oko* where the trial courts held that fundamental rights are not enforceable against private individuals but only against public officials. The Court of Appeal in both cases reversed the decisions and held that such rights were enforceable against private individuals. However, this interpretation by the courts is still flawed and limited in scope as it is unclear if protection extends to private organizations and institutions. The second limitation identified from the provision of section 42 is that the constitution only gives protection to Nigerian citizens which means that any woman who is not a Nigerian but lives and works in Nigeria is not protected which is contrary to Articles 2 and 7 of UDHR which recognizes equality before the law irrespective of race or nationality.

Evidence of inadequacy of section 42 of the Constitution can be seen in other national laws which are subject to the Constitution but are discriminatory against women. Section 26 (2) (a) of the same Constitution discriminates against Nigerian women who wish to marry non-Nigerian men. The section confers citizenship rights to ‘any woman who is or has been married to a citizen of Nigeria’ without a corresponding provision for men who marry Nigerian women. In other words, a Nigerian man can marry a woman of his choice from anywhere in the world and confer citizenship rights to her through that marriage whereas this privilege is denied a Nigerian woman.

Section 55 of the Labour Act Chapter 198 of the Laws of the Federation of Nigeria 1990 prohibits women except nurses from undertaking night work in a public or private industrial undertaking or in any agricultural undertaking. Section 56 of the same Act prohibits women from being employed in an underground mine except for those employed in management, health and services or training. The provisions of the Police
Act 2004 restrict women to secretarial duties, mandating them to seek permission to get married (section 124), prohibiting them from getting married until after 3 years of service and investigating their intended spouses for criminal records. The court however has nullified the provision of section 124 relying on the Constitution and the Charter to declare it as discriminatory in WELA v Attorney-General of the Federation^13 (Ekhator, 2015). Section 127 of the Act stipulates that an unmarried officer who gets pregnant will be dismissed.

The Criminal Code encourages violence towards women by making it a felony to assault a man (maximum sentence imprisonment for 3 years)^14 while it makes it a misdemeanour to assault a woman or girl (maximum sentence for imprisonment for 2 years).^15 The Penal Code is disproportionate in the way it applies to women in adultery cases. The charge for adultery carries a death sentence for someone who is married or divorced. For a man to be convicted of adultery, he would have been caught in the act by four independent witnesses whereas a woman needs only be convicted on the evidence of pregnancy alone (Tertsakian, 2004).

Section 55 of the Penal Code Act does not make it an offence if a husband inflicts harm on his wife for the purpose of correcting her. Other areas of laws found discriminatory are in the provisions of the Nigerian Military Force and Nigeria Tax laws.

The legal system. Nigeria has a tripartite legal system with its sources of law from common law, customary law and the Islamic Law. The application of the three legal systems is flawed with contradictions and inconsistencies and makes it difficult to harmonize legislation and eliminate discrimination. Any progress achieved by International Conventions and legislation has been weakened by the application of customary and religious laws which are discriminatory against women and has a negative impact. Culture has a negative impact on Nigerian women’s lives (Abara, 2012), and for customary rule to become law, it has to undergo three tests – (a) it must not be repugnant to natural justice, equity and good conscience, (b) it is not incompatible directly or by implication with any law in force and (c) it is not contrary to public policy. However, of recent the courts have become creative and activist in pronouncing on the illegality of these discriminatory laws. The courts have relied on the provisions of the Constitution, the Charter and the repugnancy doctrine to rule these discriminatory laws as void (Ekhator, 2019). In Anekwe & ors v Nweke 2014^18 and Ukeje & anor v Ukeje,^19 the Supreme Court condemned a customary law which disinherited a woman without a son from inheriting from her husband’s estate, and another custom that disinherited a daughter from her father’s estate respectively as unconstitutional and repugnant to natural justice (Ekhator, 2019). According to Worugji and Ugbe (2016) without these decisions, the non-discrimination provision of the Constitution would be mere declarations of intention without any prospect to benefit from it and they called for a sustained court-based advocacy in the protection of women’s rights. Ekhator (2019) calls for an amendment of the Constitution to expressly protect women’s rights and remove
ambiguity in its provision as well as domesticate international conventions promoting women’s rights.

**Failed Equality Bills**

**Gender and Equal Opportunities Bill.** In a bid to check inequality and GBV against women, a Gender and Equal Opportunities Bill (GEO) was proposed in 2010. The Bill’s focus was on eliminating discrimination and prejudices influenced by stereotypes and cultural expectations. It proposed to increase the participation of women in politics, eliminate practices based on the idea of inferiority and superiority of the sexes, prohibit domestic and sexual violence, end degrading socio-cultural practices associated with widowhood and the denial of inheritance rights. It seeks also to accord men and women equal rights under the law by changing socio-cultural practices through the promotion of gender equality in all spheres of life. The GEO Bill met a similar fate as the CEDAW Bill and was voted against by law makers during the second reading because they believed it was against their culture and religious beliefs (BBC, 2016). The Bill has been re-introduced as the GEO 2019 and seeks to include age and disability discrimination and to give effect to the fundamental human rights objectives in the Constitution as well as the CEDAW and the Maputo Protocol. The Bill has passed the second reading and has been referred to the Committee on Judiciary, Human Rights and Legal Matters for deliberation (Ekhatator, 2019; Premium Times, 2019).

**Sexual Offences Act Bill 2013.** The Sexual Offences Act Bill 2013 was introduced to make provisions on sexual offences, prevention and protection of all persons from harm and unlawful sexual acts. The bill was influenced by the Kenya’s Sexual Offences Act and both laws are based on the United Kingdom’s Sexual Offences Act 2006 (Ekhatator, 2019; Osinuga, 2015). The bill creates new offences not contained in previous laws, but a significant change introduced by the bill is that sexual crimes are no longer gender specific where men were viewed as the main perpetrators of sexual crimes and women as victims. The bill introduced new offences such as child pornography, incest, indecent exposure, deliberate transmission of HIV or other life threatening sexually transmitted diseases, gang rape and so on (Osinuga, 2015). It also contains provisions on stalking, cultural and religious practices that are discriminatory against women, sexual harassment (Ekhatator, 2019) and sexual and domestic violence against women, children and vulnerable people (Osinuga, 2015). According to Osinuga, the bill represents a much-needed reform in criminal law in Nigeria and will enhance the rights of women, children and vulnerable persons who are victims of crimes. The bill has been passed by the National Assembly, but has not been signed into law.

**Labour Amendment Bill 2016.** The bill introduced in 2016 seeks to abolish some discriminatory provisions in the Labour Act 2004 such as the restriction on women from undertaking night work, working underground in a mine and some of the sections that makes it an offence to employ a woman in certain types of industry as these are contrary to the Constitution and CEDAW. The bill has gone through the first and second reading and have been referred for consideration (Ekhatator, 2019).
It has been an uphill task to get the government to enact laws which adequately protect women against discrimination because of the ingrained beliefs that women are subordinate to men and any law that promotes equality between men and women are against God and the Nigerian culture and must be struck down. Efforts made by women’s rights activists, judicial advocacy and activism are beginning to have effect as new laws have been enacted and bills proposed to help reduce gender inequality. However, the laws which have been successfully enacted by National Assembly face challenges because some states have refused to domesticate them. The CRA and VAPPA have not been domesticated in many states in the country and the objection given for non-domestication is that the provisions are contrary to their religious and cultural beliefs (Ekhator, 2019). The enactment of gender equality laws at the national level is unlikely to cure the problem of gender inequality at the local levels if states refuse to domesticate the laws due to their culture and religion. It is the view of the writer that laws which advocate for equality of men and women will continue to meet challenges because of ingrained cultural and religious beliefs of the people. This leads us to ask the question:

Are laws the appropriate solution to gender inequality against women in Nigeria?

Calls to have efficient and comprehensive laws that promote equality and protect women against all forms of discrimination have been an uphill task. However, from the foregoing discussion, it is apparent that there are laws, that lawyers and judges can use to protect women’s rights in Nigeria. Despite this, inequality and gender-based discriminatory practices against women persist because of ingrained religious and cultural beliefs and practices that prevail. Lawmakers have also expressed that religion and culture are the primary reason they opposed gender equality laws because it is a challenge to God and the Nigerian way of life. Therefore, to address gender inequality in Nigeria, laws are not necessarily the first step to promoting equality. This is because equality laws do not change normative culture nor end discriminatory practices but focus on equal rights between men and women which ignores assumptions about gender that informs social practices and contribute to systemic discrimination of women (Smith, 2014).

To address inequality, there first needs to be a change to individuals’ attitudes and conceptions about gender. Ingrained beliefs of superiority of men and the role of women in society first need to be addressed through non-policy measures such as education and awareness-raising. Individuals need to be made aware that gender and gender roles are socially constructed and fostered by culture and religion and be educated on the harmful effects of gender stereotypes. By raising awareness, individuals can understand the pervasiveness of gender bias and how it informs societal values and norms which they are expected to conform. Through education and awareness-raising, the fallacies of gender stereotypes will be deconstructed and made visible as a mere societal creation used to maintain a divide between the two social groups and as an act of injustice to get people to conform to certain standards or be punished for failing to do so. Awareness can start as early as childhood because to achieve a sustainable human development in a sustainable and long-lasting way, people at all ages need to be empowered at every point in time (Stuckelberger, 2010). Therefore, focus should start before pre-school and
younger ages when children develop a self-concept of themselves and their academic and career interests (Schoon, 2015). Children should be made aware of how social norms and gender stereotypes affect their decisions and lifestyle choices and the ills caused by stereotypes. This can be achieved through statutory guidance targeted at schools to develop a comprehensive curriculum designed to remove gender stereotypes from educational materials and teach children that their life and career choices are not dependent on their gender. This guidance should also be used to encourage parents to raise their children irrespective of their gender in a non-gender biased way.

Religious leaders are known to have a big influence on their members and these leaders should be made aware of the implications of gender stereotypes, the ills of certain discriminatory culture such as early marriages, inheritance rights and widowhood practices and how they harm society. When these are impressed on children and parents through religious institutions, there is a prospect that they will begin to form new concepts of who they are and their self-worth as individuals will not be based on their gender. To ensure a lasting change to attitudes and to address the remaining persistent effects and harms caused by gender stereotypes, reformed and new laws and policies will then be needed to reinforce change which the State must enforce.

Conclusion

Though there are some equality provisions in Nigeria, laws and policies are unlikely to have a profound impact on sex discrimination without a major shift in mindset. This was evident in the previous rulings of the Supreme Court which asserted the legitimacy of discriminatory customary laws that disinherit women despite the existence of section 42 of the Constitution. It was not until recently that the court decided to use the section to strike down discriminatory inheritance laws. Until religious and cultural beliefs that promote superiority of the male gender are changed through education and awareness, discrimination will continue to be a problem to the female gender in Nigeria. Equality bills will continue to meet strong oppositions because the legislature is made up of citizens who have these ingrained beliefs about the role of women in society and will not be receptive to change. Change needs to start from the grass-root and the government must demonstrate its will by supporting this change through education and awareness-raising.

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Notes
1. (2000) 5 NWLR 402.
2. Suit No: ECW/CCJ/APP/12/07; Judgment No: ECW/CCJ/JUD/07/10.
3. SC 45/1997.
4. (SC 201/2005) [2008] 10.
5. Ibid.
6. SC 45/1997.
7. Ibid. at 1.
8. ECW/CCJ/APP/17/14.
9. Reported by United Nations Economic Commission for Africa, retrieved from http://www1.uneca.org/awro/awro.databank.aspx.
10. s (2009) LPELR CA/IL/2/2008 cited in Ekhator (2015).
11. (1985) 6 NCLR 356.
12. (1996) 6 NWLR 584.
13. (Unreported) Suit No: FHC/IKJ/CS/M128/2010.
14. Section 353 of the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 1990 (Criminal Code Act).
15. Section 360 of the Criminal Code Act.
16. 637th and 638th Report of the Committee on Elimination of Discrimination against Women.
17. (2004) 11 NWLR (Pt 882) 196.
18. (2014) All FWLR (Pt 739) 1154.
19. (2014) LPELR – 22724 (SC).

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