GENDER ISSUES AND THE NIGERIAN CONSTITUTION: A RAY OF LIGHT, OR TWILIGHT ON THE HORIZON?

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ABSTRACT

The consensus in modern democracies is that constitutions should be based on inclusivity. However, the Nigerian constitution is replete with provisions which are interpreted to either deny the realities of women or outright discriminate against them. This article examines the intersections of gender, law and the Nigerian constitution. It argues that women have played a minimal role in the history of constitution making. The inclusion and interpretation of equality; non-discrimination; negative vs. positive rights and gender quotas are biased. The article posits that a conscious effort to give women presence in the polity started in the Nigerian Fourth Republic. The National Gender Policy mainstreamed gender to increase the participation of women in politics and hoisted favourable economic strategies. In addition, in 2014, President Goodluck Jonathan inaugurated a national conference, where far-reaching resolutions were made on gender issues. Consequently, some of the socio-economic rights have been made justiciable and imputed in the latest Constitutional Amendments Bill. An impasse between the president and the National Assembly led to his refusal to assent. The tenure of the government has ended and the resolutions of the conference may not be revisited for some time to come. In contrast to the earlier position, the Nigerian Supreme Court, in two notable decisions, strongly condemned discriminatory inheritance customary practices. The author's finding is that constitutional amendments and a continuous active stance by the courts, amongst others, offer leeways for women's development.

Keywords: courts, equality, gender quotas, negative rights, non-discrimination, positive rights

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INTRODUCTION

In modern democracies, constitutions have become a tool to organise the multi-faceted relationship between state power, society as a whole and individuals. It describes the method of exercising governmental powers as well as the rights of citizens (Planck 2009). In Africa, most contemporary constitutions give voice to the people by entrenching democratic governance (Africa: Constitution-building 2009). Constructively, a constitution is the most basic law of a country.

Lorber (1995) asserts that gender is embedded in all social processes of everyday life and in social organisation. Men and women are ascribed social roles to which they automatically conform. Both within the family sphere and in the larger society, men and women play different roles. According to Lorber (ibid.), gender as a modern social institution constructs women as a group which is subordinate to men.

Though there are several theories of law, sociological jurisprudence posits that the law is a reconciler of conflicts and an attractive tool for regulating conduct (Freeman 2001). Feminist legal theorists have reacted against traditional jurisprudence (ibid.). Atsenuwa (2001) argues that the law is gendered, since the standard for defining a citizen is the male. This notion is being used to reinforce gender through discrimination and marginalisation. By extension, the Nigerian constitution, as the organic and fundamental law of the country, is gendered.

In the history of constitution-making in Nigeria, women were rarely involved and as a consequence, issues affecting them were largely ignored. Prior to independence and up to the start of the present Fourth Republic in 1999, the representation of women in the Constitution Drafting Committee or the Constituent Assembly was dismal. Moreover, the Nigerian constitution is replete with provisions which are not interpreted to capture issues of concern to women, or even encapsulate women's rights. Fundamental human rights provisions are thinly applied, socio-economic rights are non-justiciable, and gender quotas are excluded, amongst others.

However, starting from the Nigerian Fourth Republic in 1999, President Obasanjo, in an unprecedented move, appointed several women to key positions in his administration (*The Nation* 2007). He also adopted a National Gender Policy to enhance women's development through the strategic implementation of CEDAW, NEEDS, SEEDS and NEPAD.[1]

In similar vein, in 2014, President Goodluck Jonathan inaugurated the 492-member National Conference, stressing that its objective was to engage in intense introspection of the political and socio-economic challenges facing the country. Thereafter, they were expected to formulate the most acceptable way forward in the collective interests of all Nigerians (*Nigerian Eye* 2014). The conference deliberated on gender issues, amongst others.[2] The president also constituted a seven-member committee to develop appropriate strategies for implementing the resulting recommendations.

Arguably, there was a ray of light on the horizon, earlier this year: some economic rights, such as the right to education and health, were made justiciable and were included

in the Constitution Amendment Bill. The president refused to sign, arguing that the rights are too broad and open-ended, since private schools and health institutions would also be compelled to implement these (*The Guardian* 2015). In *AG of the Federation v National Assembly*,[3] the Nigerian Supreme Court held that the status quo on the issue be maintained. Later, the court directed the two parties to settle their differences out of court. The tenure of the government ended on May 29, and the president never assented to the bill. Consequently, hopes have been dashed regarding the inclusion and implementation of these provisions, which would be of immense benefit to women. Largely, it is also uncertain what will happen to other resolutions made on gender issues.

The Supreme Court equally made an about-turn by condemning highly discriminatory Igbo customary practices (in the South East) which prohibit females from inheriting from their father's estate. Equally unlawful is the practice that a widow may not inherit from her husband's estate. These moves have been welcomed, since these women can now access their rightful properties.[4] Despite this, many are worried about the enforceability of these decisions at community level.

Against the backdrop of constitutional amendments in other jurisdictions, especially African countries, this article examines the impact of gender on the constitution. In other words, how has the Nigerian constitution been used to reinforce gender? The aim is to investigate how gender can be deconstructed to create equality between men and women. The article asserts that the visible ray of light will become a beacon of light, once the Nigerian constitution is amended to eliminate gender-based inequality; when the courts consistently denounce discriminatory cultures, and enforce gender-specific laws and policies.

The article is divided into the following sections: the intersection of gender, law and the Nigerian constitution; the history and roles of Nigerian women in constitution making; gender and the Nigerian constitution; lessons and future prospects; and the conclusion.

CONSTRUCTS: GENDER, LAW AND THE NIGERIAN CONSTITUTION

Gender is ingrained in everyday social processes involving individuals and society as a whole. The law has contributed in the entrenchment of gender, and since the constitution is the organic law of the country, this section considers the intersections of gender, law and constitution.

The intersection of gender, law and the Nigerian constitution

Gender relates to the socially constructed roles ascribed to men and women in society. These are the normative standards applied to an individual's sex category. Gender differences have been used to justify sexual stratification and the unequal treatment of

women. It has led to the systemic subordination, domination and exclusion of women by men (Lorber 1995). Risman (2004) notes that conceptualising gender starts from how identities are constructed during early childhood development, during adult experiences and in the process of internalising social mores. Over time, this develops to the extent that men and women choose gender-typical behaviour. In essence, we all engage in gender prescriptions in our everyday lives.

Feminists argue that from the very origins of law, men and women were given different status, with the latter being subordinate. The proponents of natural law made a distinction between men and women based on the perceived physical superiority of men.[5] Hence, they did not effect any positive change in the status of women. Legal positivists define the law as the sum total of the commands of a sovereign; the implication being that since the rules would have been laid down anyway, it forecloses the opportunity for probing the morality of the law or evaluating its differential impact on men's and women's lives.[6] Because the law did not regulate the private sphere, which mainly affects women, it reinforced the subordination of women in society. Legal realists such as Oliver Wendell Holmes state that the law entails the prophecies of what the courts will do, as against what a statute says (Freeman 2011). Hence, the law is actually the interpretation given to statutes by the courts. Due to the fact that the dominant prejudices in most societies are male biased there is a yawning gap between laws as they are written, and the way they are interpreted. In most cases, officials simply interpret the law within the context of the overall societal milieu and its prejudices, which has never been favourable to the position of women.[7] To summarise: the law is male-biased and gendered (Atsenuwa 2001). Radical feminism stresses the importance of perceiving women as a class dominated by men. It canvasses for changes in the laws which would continue to favour males, even if power inequalities were brought to an end (Curzon 1995).

According to Karibi Whyte (1987), the Nigerian constitution is the *fons et origo* (source and origin) of all rights within the polity as well as the *grundnorm* (fundamental norm). Arguably, since the law is gendered, the constitution, which is the fundamental law of the country, is also gendered. This article asserts that, as it is with law generally, the same influences, parameters, silences and acquiescence are involved in the drafting as well as the contents of the constitution.

Deutsch (2007) makes an urgent call for the undoing of gender and gender relations, arguing that this can be done by dismantling the structure of gender inequalities in society. According to Dahl (cited in Atsenuwa 2001), law as an institution to a large extent contributes to the maintenance of traditional male hegemony in society. At the same time, the law is fertile for the cultivation of rules which can provide the foundation for vast changes (Atsenuwa 2001). In other words, the law can be used to deconstruct gender. Since the constitution is the fundamental law of Nigeria, its gendered provisions are amenable to change.

History and roles of Nigerian women in constitution making

The first real attempt at constitution making started with the amalgamation of the Southern and Northern protectorates in 1914. The various constitutions saw the creation of Legislative and Executive Councils.[8] Nigeria became independent in 1960 and became a Republic in 1963.[9] This marked the beginning of the First Republic. However, due to political crisis in the West, the military took over power in 1966 and that marked the end of the Republic (Mowoe 2008). There was a counter-coup in July 1966 (lasting until 1975) when the federal structure of Nigeria was replaced by a unitary one and the constitution was suspended. Another coup subsequently took place, and from 1975–1979 the Muritala–Obasanjo regime ruled (Ojo 1987). Obasanjo handed over to a civilian regime led by President Shehu Shagari, and this signified the start of the Second Republic. Shagari ruled for just four years before being overthrown in 1983. This led to the collapse of the Republic.[10] The Third Republic was aborted due to the annulment of the June 12, 1993, elections held by President Ibrahim Babangida. The Fourth Republic started with the adoption of the 1999 constitution by General Abubakar (Mowoe 2008).[11] This is the present constitution, though there have been several constitutional reviews.

Jekayinfa (1999) maintains that Nigerian women held important positions in their communities before the advent of colonial rule: in the Oyo Empire, women were the Iya Oba, Iya Kere, Iyalagbon and Iyalode.[12] The Hausas were characterised by matrilineal succession in the ruling class and the females held high political office: Queen Amina of Zaria, for instance, succeeded her father, conquered the neighbouring towns and dominated these regions for 34 years. In Igboland, females formed market and village groups and, through their representatives, discussed issues affecting them at village meetings.[13] Ezeillo (2000) notes that this scenario changed during the colonial period: from 1914 to the end of the First Republic in 1963, women were excluded from constitution making and were not allowed to vote. The Clifford constitution of 1922 restricted the electorate to adult males in Calabar and Lagos who had been resident in the city for at least one year and had a gross annual income of 100 Naira (50 US cents). The Richards constitution of 1946 reduced the required income to N50.00 (25 cents). The Macpherson constitution removed the property qualification, but still restricted the electorate to only adult males who paid their taxes. By the Lyttleton constitution of 1954, franchise was universal in the East and West, but was limited to adult males in the North. Apart from a few women who attended constitutional conferences in the United Kingdom towards the period of independence, constitution making was the prerogative of males until the end of the First Republic in 1963.

The Second Republic (1979–1983) saw the constitution-making process beginning in 1975, when the military government of General Muritala Mohammed set up a Constitution Drafting Committee made up of 50 appointed members – all men (Igbuzor 2002). However, it was during this period that the ground for non-discrimination on the basis of sex was included in the 1979 constitution. During the aborted Third Republic (1983–1998) some constitution-making processes did take place, but there were only

five women among the 150 members of the Constituent Assembly that drafted the 1989 constitution (Aina 2002). In 1994, General Sanni Abacha inaugurated the Constitutional Conference comprising about 360 members, only five of whom were women (Report of the 1994/1995 Constitutional Conference).

In preparation for the Fourth Republic in 1998, Abdusalami Abubakar inaugurated the Constitutional Debating Committee which featured no women. It took the intervention of the National Council of Women Societies (led by Hajia Zainab Minna) who protested their exclusion, for four women to be included on the committee. However, representations by women on issues affecting them were disregarded (Koripamo-Agary 2002). The military structure is largely monolithic, therefore women's issues were not accorded any significant recognition during those periods.

In the present Fourth Republic, the first major active participation by women came with the call for memoranda by the Presidential Technical Committee (PTCRC) on the review of the 1999 constitution. The National Centre for Women Development invited a team of experts to review the constitution. Their recommendations on engendering the constitution were further subjected to debates by civil society, including gender activists, private individuals and women politicians. For the first time, a position paper by women, on the 1999 constitution, was presented to the PTCRC. Regrettably, the *Minority Report on Women's Rights and Gender* was not presented for public debate (Koripamo-Agary 2002). In the late President Yaradua's Electoral Reform Committee (ERC) there were only three women among the 23 members. In 2011, President Jonathan included only three women in the Justice Belgore Constitution Review Committee (Akiyode-Afolabi n.d.) The overarching implication of the underrepresentation of women in constitution-making processes, is that issues of concern – such as the preamble, the language of the constitution, as well as women's rights, amongst others – were pushed to the background. Some of these issues are considered in the next section, particularly the effect of these provisions on the life experiences of women in Nigeria.

Gender and the Nigerian constitution

According to Huckerby (2013), modern constitutions include several provisions guaranteeing the protection of women: equality; non-discrimination; the rights of women; citizenship and nationality; rights to property and inheritance; reproductive rights; marriage and family life; the status of religious/customary laws and of international law and general human rights guarantees. However, this section analyses the inclusion of provisions related to equality; non-discrimination; negative vs. positive rights; gender quotas in the Nigerian constitution and their impact on women.

Gender equality in the Nigerian constitution

The principle of imputing gender equality into the constitution has a historical basis. It seeks to cure the defects of the past, by promoting women who have been unjustly

treated to date, in legal contemplation, to the level of men (Kuzeci 2008). Mackinnon (2012) rightly asserts that stipulating gender paves the way for inequality; constitutions should not reinforce this, but rather include equality provisions. The only provision akin to stating equality in the Nigerian constitution is the preamble, which states that 'the purpose of the constitution is to promote good government and welfare of all persons in the country on the principles of Freedom, Equality and Justice' (Constitution of the Federal Republic of Nigeria 1999). Arguably, this is very vague and sketchy, and has never been interpreted as forming the basis for equality for women. Osipitan (2004) relates it to autochthony of the Nigerian constitution. In the same vein, Chapter II provides that every citizen shall have equality of rights, obligations and opportunities before the law. As will become evident in this article, this section remains unenforceable.

This is in contradistinction to the norm in other jurisdictions which follow a substantive approach to equality provisions. Article 3(2) of the German Basic Laws provides for equality before the law. Thus, the 'state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist'.[14] Mackinnon (2012) states that the aim is to overcome traditional male domination over women, as the substance of gender hierarchy is identified and addressed in the text. There is equality of rights under the Canadian constitution: Section 15(1) states that 'every person is equal before the law … has the right to equal protection … any discrimination based on sex … subsection (1) does not preclude any law, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of sex…'[15] Most likely because of the country's apartheid history, the South African constitution contains very elaborate provisions on equality.[16]

Nigeria consists of 36 states, of which only three have passed the Gender and Equal Opportunities Commission Laws: Imo and Anambra States (in 2007), while Ekiti State restyled it as the Gender and Equal Opportunity Law (2013). Similarly, the Gender and Equal Opportunities Bill, 2010, has been proposed at the Lagos State House of Assembly (Anyogu and Arinze-Umobi 2011). Plateau State Assembly has been working to establish a Commission for Gender Equality (*Newswatch Times* 2013). These are all steps in the right direction. However, the crucial starting point is to adopt a substantive approach to equality provisions, as shown in the above jurisdictions. It will be weightier because the constitution is the organic law, and commission laws will contain several other provisions stating further opportunities for women.

Non-discrimination

Section 42 of the 1999 Nigerian constitution provides for non-discrimination on the grounds of sex. This is unlike the South African constitution, which prohibits discrimination on the grounds of both sex and gender. While sex may denote biological differences and is very limited, gender is broader, since it denotes the social construct of roles. The only elaboration on the meaning of discrimination in the Nigerian constitution

is 'not being subjected to any disability or restriction or accorded any privilege or advantage'.[17] Generally, discrimination is the overt or subtle disvaluing of an individual or group. This phenomenon is pervasive, as it affects all members of that group, covers all aspects of human life, and is infinite in its variations and applications (McLean 1988).

Though the National Conference (2014, 420) recommended the widening of non-discrimination to cover gender, non-discrimination on the ground of sex is unobserved in Nigeria. Women are unashamedly subjected to being undervalued in all strata of life. In particular, this article focuses on discrimination in the areas of citizenship and property rights. Pertaining to citizenship rights; the first observation is that Section 26 of the constitution allows foreign wives of Nigerian men 'to register as citizens of Nigeria'. It is, however, silent on the status of foreign men who are married to Nigerian women. The gender bias of this provision was manifested with the deportation from Nigeria of Dr. Patrick Wilmot, a Jamaican, during Babangida's administration, notwithstanding the fact that his wife hails from Sokoto State (*The Punch* 2013, 79).[18] The National Conference (2014, 547) rightly proposes that section 26(2) (a) of the Nigerian constitution be amended to read 'any person who is or has been married to a citizen of Nigeria' can be granted citizenship by registration. This will cover male and female spouses.

Second, Section 29(2) (4) (b) provides that any woman who is married shall be deemed to be of full age. Subsection (2) (a) prescribes full age to be 18 years and above. This provision silently supports child marriages, as it out rightly confers 'full age' on every married woman. According to Atsenuwa (2011), the constitution is able to take such a stance because it does not confer capacity on girls, deeming capacity irrelevant because girls have no choice in the decision making. A husband is tacitly appointed a girl's *guardian ad litem*, allowing his will to be superimposed on hers, without question. In 2013, the Nigerian National Assembly attempted to amend this part of the constitution so that 18 years will be the age of maturity for all purposes. However, it failed to obtain the requisite two-thirds support of its members (*The Lawyers Chronicle* 2013). The majority chose to maintain the status quo, thereby allowing the girl-child to continuously face the socio-medical consequences of early marriage (Ogunniran 2011). The National Conference (2014, 548) resolves that section 29(4) (a and b) should be harmonised to ensure full age is 18 years and above.

Third, the Nigerian constitution confers citizenship on the premise of belonging to an indigenous community. There are no clear-cut definitions on concepts such as 'natives', 'indigenes' or 'settlers'.[19] This lacuna has further exposed Nigerian women to inequality. One of the areas that needs immediate clarification, is the indigeneity of women in inter-ethnic marriages. While some argue that women retain whatever indigeneity they laid claim to prior to marriage, others contend that women, upon marriage, derive their indigeneity from their husbands (Atsenuwa 2011). The provision in the Federal Character Commission is further confusing, as it states that 'a married woman shall continue to lay claim to her state of origin for the purposes of implementation of the

federal character formulae at the national level'. Recently, Justice Ifeoma Jombo-Ofo, an indigene of Anambra State, married a man from Abia State (both located in Eastern Nigeria). She transferred her service from Anambra State due to her marriage, having served in the Abia State judiciary for 14 years. However, the Chief Justice of Nigeria (CJN) refused to swear her in as a Court of Appeal judge on the platform of Abia State on the premise that it amounted to a breach of Federal Character, as it affects the state of origin of married women (*Justice Ifeoma Jombo-Ofo finally sworn …* 2012). Though she was eventually cleared by the National Judicial Council and sworn in, the scenario was highly embarrassing. Jombo-Ofo's years of meritorious service in Abia State were not even a bone of contention – she simply was not considered capable of filling the Abia State slot because she was not an indigene of that state.

Anambra State attempted to provide a solution by providing for the right to choose indigeneship.[20] This is a welcome development, but a drop in the ocean as the remaining 35 states in Nigeria may never have such a provision. The National Conference (2014, 746) emphatically states that a woman shall be constitutionally allowed to enjoy the indigeneship of her place of origin (birth) or that of her husband (place of marriage).

A ray of light emerged with two recent Supreme Court judgements on the property and inheritance rights of women. The court made decisive pronouncements on issues of discrimination against women. The first case was *Lois Chituru Ukeje v Gladys Ukeje*.[21] The respondent sued the applicants (wife and son) at the High Court, claiming that as one of the children of the deceased, she was amongst those who should administer his estate. The court found she was a daughter of the deceased and the Court of Appeal upheld the decision. The Supreme Court agreed with both courts and voided the Igbo native law and custom which disentitles female children. Justice Rhodes Vivour, who read the lead judgement, succinctly stated:

> No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father's estate, is in breach of Section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void and it conflicts with Section 42 (1) and (2) of the Constitution.[22]

In the second case, *Onyibor Anekwe v Maria Nweke*,[23] the Supreme Court, in dismissing the appeal, strongly canvassed:

> The custom and practices of Awka people upon which the appellants have relied for their counter claim is hereby out rightly condemned in strong terms … It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of women folk in the given society … Any culture that disinherits a daughter from her father's estate or a wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with … For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children,

> by her late husband's brothers on the ground that she had no male child is indeed very barbaric, worrying and flesh skinning…[24]

These decisions are timely and apposite in a changing world poised to address imbalances. But Oni (2014) is wary of the practicability and enforceability of the judgements. According to him, the Igbo customary practices of disinheriting widows and daughters are deeply entrenched. He rightly suggests that the government in those states practising this culture should seriously enforce the judgements; state laws on inheritance should be amended and traditional rulers/heads of family who continue to perpetuate the custom should be sanctioned, to the extent of being removed. In the writer's view, there is a need to raise awareness of the negative impact this custom has on women, as well as of the need for change.

Negative rights vs positive rights

Negative rights comprise civil liberties (fundamental human rights), while positive rights are socio-economic. The Nigerian constitution provides for both classes, however, there are different levels when it comes to their enforceability by the courts.

- Fundamental human rights

Chapter IV of the Nigerian constitution provides for the fundamental rights of citizens.[25] However, some provisions are interpreted without taking cognisance of emergent gender issues. The right to life is interpreted within the context of the commission of a criminal offence, excluding abortion and maternal deaths. In other jurisdictions, for instance, such rights have been given expansive interpretation. In India, Article 21 of the constitution deals with the right to life; nevertheless, the Supreme Court in *Vishaka v State of Rajastan*[26] held that right to life includes freedom from sexual harassment in the workplace.

Under the Nigerian constitution, the right to dignity of the human person covers the treatment of offenders in police custody or prison (Nwabueze 1982). Mowoe (2008) rationalises that the right to dignity of the human person is the most intrinsic right of man, hence the universal concept of equality compels a state to have certain minimum standards as a respect for the dignity of a human being.[27] In India, for instance, the court in *BodhisattwaGuatam v SubhaChakraborty*[28] held that right to life is inclusive of the right to live with dignity, and that rape violates this right. Ashiru (2004) canvasses that rape, domestic violence and female genital mutilation violate the dignity of women by making them inferior, weak and unstable. Subsequently, right to dignity of the human person should be given an expansive definition to cover the above acts.

The Nigerian constitution provides for the right to acquire immovable properties. However, in several communities, due to application of customary laws, women still do not possess land rights (Uzodike 1993). Regrettably, according to the *Gender Report* (2012), an estimated 54 million (out of 78 million) Nigerian women are based in

rural areas, earning a living from the land. Realistically, they lack access to land due to endemic patrilineal systems. In addition, the *Land Use Act* (an existing law in the constitution) vests land ownership of a state on the governor.[29] This provision constitutes double jeopardy, as most women are unable to access funds from financial institutions to purchase lands. The untold hardship on women as a result of this practice appears to have been resolved by the Kenyan and Ghanaian constitutions, which can be instructive in future Nigerian constitutional reviews. In the former's most recent constitution, land ownership is in accordance with the elimination of gender discrimination in law, customs and practices related to land and property.[30] The Ghanaian constitution has gone further by providing that a spouse shall not be deprived of a reasonable provision out of the estate of his/her spouse, regardless of whether the spouse died intestate. Parliament shall enact laws to regulate property rights, hence, a spouse shall have equal access to property jointly acquired during marriage. This shall be equitably distributed upon dissolution of marriage.[31]

- Socio-economic rights

Chapter II of the Nigerian constitution provides that the state shall control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice equality of status and opportunity;[32] direct its policy towards ensuring adequate shelter, suitable and adequate food, reasonable national wage … for all citizens;[33] provide adequate medical and health facilities for all persons;[34] equal pay for equal work without discrimination on account of sex;[35] and offer adequate educational opportunities at all levels.[36] Implicit in the above provisions are the rights of women to shelter, adequate food, medical care, education and employment protection. But these rights fall within Fundamental Objective and Directive Principles of State Policy. They are mere guidelines to the government in the formulation of policies, hence, these rights are unenforceable by virtue of section 6(6)(c) of the Nigerian constitution.

Consequently, Nigerian women experience gross lack in the provision of socio-economic welfare. The 2008 *National Demographic Health Survey* (NDHS) estimated the maternal mortality rate (MMR) at 545 women maternal death per 100 000 live births (National Population Commission [NPC]). The 2013 NDHS revealed the MMR to be at 576 women maternal death per 100 000 live births for the seven years preceding the survey (NPC and ICF USA). The distribution of HIV/AIDS prevalence over the years has consistently reflected a higher percentage for women (NACA 2005).

The 2008 NDHS revealed that 82 per cent of women earn less than their husbands, and 70 per cent of women reported that their husbands mainly decide how their cash earnings are used (NPC). Curiously, the 2013 NDHS showed that 72 per cent of women who earn less than their husbands determine by themselves the use of their earnings. In view of past studies, future surveys will need to confirm this new trend. Meanwhile, regarding the distribution of work; in the farming sector there are 13 276 690 males

compared to 3 356 586 females, the latter constituting less than 40 per cent of the population. In the unpaid family category, 13 753 253 are male while 9 378 150 are female (i.e., 15% less than the males). In essence, several women are in the unpaid category, which will ultimately affect their economic empowerment. In respect of paid employees, 13 084 424 are male and 6 491 010 are female (almost 50%). Even in the farming sector, female paid employees barely make up half of the population (NBS, *CBN Socio-Economic Survey of Nigeria* 2010). The percentage of women in the workforce is significantly lower than that of men, which obviously has a multiplier effect on their financial independence. Notably, working women's spending abilities are significantly influenced by their husbands.

Consequently, there is a need to enforce socio-economic rights and to establish an effective adjudication system. The Nigerian Supreme Court rekindled hope in *Attorney General of Ondo State v Attorney General of the Federation &35Ors*[37] and held *inter alia* that courts cannot enforce any of the provisions of Chapter II of the constitution until the National Assembly has enacted specific laws for their enforcement. In other words, once the law-making body makes a law on any issue in the chapter, the judicial organ can activate it through enforcement.

As mentioned earlier, the 2014 National Conference recommended that socio-economic rights be made justiciable. Against the backdrop of the views expressed by President Jonathan on the subsequent inclusion of two of such rights in the Constitutional Amendment Bill,[38] only time will determine the thrust of these rights in Nigeria.

Gender quotas

The past two decades have witnessed global trends in the use of gender quotas (Franceschet et al. 2012),[39] which are aimed at increasing the number of women in elected office. Opponents of gender quotas assert that it will facilitate access for unqualified women with little interest in promoting women's concerns, reinforce stereotypes about women as political actors and deter ordinary women's participation (O'Brien 2012).[40] Conversely, proponents argue that gender quotas will promote the diversity of the type of women elected; raise awareness of women's issues in policy making, change the gendered nature of the public sphere, and inspire female voters to be more politically involved (Franceschet et al. 2012).

Nigerian women are generally marginalised. Available statistics show that Nigerian women's overall political representation and participation is less than seven per cent, despite the fact that they constitute 50 per cent of the population (*Nigerian census: Gender population distribution shift*).[41] This translates into low involvement in governance and decision making in the country.

When the Electoral Reform Committee (ERC) was inaugurated by the late President Yar'Adua in 2007, several women's groups agitated for the inclusion of women's issues. Accordingly, the ERC recommended in its report that political parties should maintain

20 per cent female representation in the membership of their governing bodies. Also, internally, parties should be more democratic by giving greater attention to the nomination of women candidates and ensuring that they have equal access to opportunities within party structures. Further, political parties shall nominate, for proportional representation, at least 30 per cent female candidates. The report was submitted to the National Assembly for consideration (Akiyode-Afolabi 2012, 2013), but sadly womenfolk's expectations of political relevance were dimmed when the 2010 *Electoral Act* was passed without the approval of the above recommendations. The National Conference (2014, 746) has elevated affirmative action policy to a constitutional right. If this is included in the constitution, stakeholders can mandate government to achieve (at all levels) at least 35 per cent affirmative action for women.

LESSONS AND FUTURE PROSPECTS

The history of constitution-making in Nigeria chronicled non-participatory roles for women. This position has endured, albeit with little improvement (as noted above) in the present democratic dispensation. The global trend is towards the active participation of the people in the constitution-making process (Ebeku 2005). This is the leaning in several African countries, and offers a valuable lesson for Nigeria (Dobrowolsky and Hart 2003). In the drafting of Uganda's constitution in 1995, women played a significant role during all stages of the process. They were members of the Uganda Constitutional Commission; women's rights-related Non-Governmental Organisations (NGOs) educate and mobilise women; they were elected as delegates to the Constituent Assembly and played a crucial role in incorporating women's rights into the constitution (Ebeku 2005). South African women formed part of Constitution Drafting Committees; the outcome was strong guarantees of gender equality and protections against discrimination (Hart 2003).

Notably, the 2014 National Conference touched on several areas of concern to women in the 1999 constitution. It granted women full and equal opportunities for the realisation of all fundamental rights; the language of the constitution shall be gender responsive; all discriminatory laws and practices against the female gender shall be removed from the statute books; the Federal Character Commission shall be renamed the Equal Opportunities Commission; and there shall be gender mainstreaming of all policies and programmes for the development of the nation. Tripp (n.d.) has commented on the growing phenomenon of inter-party groups of women who are members of parliament forming coalition groups. In similar vein, women in the Nigerian Parliament should come together and act as pressure groups to ensure that the resolutions of the 2014 National Conference are imputed in future constitutional amendments.

Similar to the Supreme Court decisions in the above cases, the courts must develop a transformative jurisprudence on gender issues. Gender inequality is an artefact of a historical disadvantage that is asymmetrical and subject to change. It is the combination

of a substantive approach and an asymmetrical hierarchy which are used in modern constitutional systems such as Canada and South Africa (Mackinnon 2012).

Nigerian women must continue to agitate for the enforcement of the recommendations of the 2014 National Conference Affirmative Action, through electoral reforms or constitutional review. Hwang (1993) rationalises that those who are afraid of imputing gender quotas must realise that, *simpliciter*, it seeks to place in office the minimum number of people who might naturally be there now, had the opportunity been available.

Finally, gender-related legislations and policies need to be consciously enforced to bring about the desired change (Agomo 2013). Some of these include: the *National Human Rights Commission (Amendment) Act*, 2011, the National Gender Policy of 2006; the National Health Policy of 2004; the National Policy on HIV/AIDS of 2003 and the National Policy on Poverty Eradication of 2001 (*Nigeria's Fourth Periodic Report, 2008–2010*). As rightly stated by Assie-Lumumba (in Jekayinfa n.d.):

> The objective of a gender focused analysis or policy is not for the female to conquer the social space that has been long controlled by male from male dominion, but to acknowledge and value a special feminine space with its intrinsic value and to promote the needed equality of opportunity and human worth of men and women, boys and girls in every sphere of the society.

CONCLUSION

Clearly, Obasanjo's administration ignited a ray of light when he made unprecedented strides by including more women in his administration and initiating a Gender Policy. Similarly, both the 2014 National Conference and the Electoral Reform Committee have made sweeping recommendations on gender issues. It is imperative that we amend the Nigerian constitution to accommodate these directives, as it would be in line with trends around the world. The Nigerian judiciary must be ready to develop the gender jurisprudence by giving effect to such amendments.

The article submits that, ultimately, it is the implementation of the constitution as well as these laws and policies that will precipitate the requisite change. This will crystallise into creating an enabling environment for both men and women to thrive in public, economic and social life, and, in turn, boost viable national development.

NOTES

1 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); National Economic Empowerment and Development Strategy (NEEDS); State Economic Empowerment and Development Strategy (SEEDS) and New Partnership for Economic Development (NEPAD). Happily, President Buhari has indicated his commitment to enforcing the policy (*The Vanguard* 2015).

2 It proposed that grounds for non-discrimination should be widened to include 'gender', provision on citizenship should be amended to cover spouses; socio-economic rights should be made justiciable and affirmative action should be elevated to a constitutional right, amongst others.
3 (Unreported) Suit No: SC 214/2015 of May 7, 2015.
4 Nigeria comprises South West, South East, South South, North Central, North West and North East.
5 The Greek philosopher, Socrates, argued that being a woman was a divine punishment, since a woman was only halfway between a man and an animal. His student, Aristotle, believed that women were actually a deformity, and that equality between men and women would be hurtful (McMinn 2001).
6 Arguably, offences such as domestic violence and rape are committed against women with impunity, due to overly legalistic requirements pertaining to proof.
7 *Bradwell v Illinois* 16 Wallace's U.S. Supreme Court Reports 130 (1873), Myra Bradwell was the editor of *Chicago Legal News* and wife of an Illinois judge. She appealed to the Supreme Court against the decision of the High Court of Illinois denying her a licence to practise law by reason of her sex. The appeal was dismissed by a majority of four to one. According to Justice Bradley (one of the three judges in the majority), the natural and proper timidity and delicacy of the female sex evidently makes it unfit for many of the occupations of life. By divine ordinance and the nature of things, the domestic sphere therefore is the domain of woman and represents the function of womanhood.
8 1922 Clifford constitution; 1946 Richards constitution; 1951 McPherson constitution and 1954 Lyttelton constitution.
9 Consequently, the Queen of England ceased to be the Queen of Nigeria.
10 From the First to the Second Republic, the military ruled for 13 years under four leaders: General J.T. Aguiyi Ironsi (Jan–July 1966); General Yakubu Gowon (July 1966–July 1975); General Muritala Mohammed (July 1975–Feb 1976) and General Olusegun Obasanjo (Feb 1976–Oct 1979).
11 The military took over in 1983 and ruled for another 16 years: General Mohammed Buhari (1984–1885); Ibrahim Babangida (1985–1993); Interim National Government of Ernest Shonekan for some days; Sanni Abacha (1994–1998) and in 1999 Abdusalami Abubakar handed over to another civilian government, under General Olusegun Obasanjo.
12 Iya Oba – the king's official mother who shared words of wisdom; Iya Kere was the custodian of the palace treasury, including the royal insignia and the paraphernalia of office; Iyalagon – the mother of the crown prince, wielded great authority and ruled over part of the capital city; the Iyalode saw to the Oba's spiritual wellbeing as well as women's trading interests.
13 These constitute the modern Abia, Anambra, Enugu and Imo states.
14 Basic law for the Federal Republic of Germany, as last amended by the Act of 21 July 2009.
15 Sec 51 (2) Canadian Constitution Act of 1982.
16 It provides that everybody is equal before the law and has the right to equal protection … equality includes the full enjoyment of all rights and freedom, to promote the achievement of equality, legislative and other measures to protect or advance persons or categories of

persons, disadvantaged by unfair discrimination may be taken. The state may not unfairly discriminate against anyone on grounds of gender, sex… Sec 9 (1-3) *Constitution of the Federal Republic of South Africa*, 108 of 1996.

17 Section 42 (1) 1999 constitution of Nigeria.

18 A similar provision was declared unconstitutional in the Botswana case of *AG of Botswana and Unity Dow* 1994 (6) BCLR 1.

19 Section 25, 1999 constitution of Nigeria.

20 Gender and Equal Opportunities Commission Law.

21 (2014) LPELR 22724SC 1. The Court of Appeal in the case of *Mojekwu v Mojekwu* (1997) 7 NWLR (pt 512) declared repugnant to natural justice, equity and good conscience, the Nnewi custom of *oli-ekpe* granting the eldest male child in the family property rights to the exclusion of the deceased's biological daughters. Sadly, on further appeal in *Mojekwu v Iwuchukw* (2004) 11 NWLR (pt 883) the Supreme Court held that the issue of *oli-ekpe* custom was not joined by the parties.

22 p. 33.

23 (2014) LPELR 22697 (SC) 1.

24 Clara Ogunbiyi read the lead judgement, p. 36.

25 These are right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to peaceful assembly and association, right to freedom of movement, right to own and acquire immovable property anywhere in Nigeria and on compulsory acquisition of property. Secs 33–41, 43–44, 1999 constitution of Nigeria.

26 AIR 1997 SC 301.

27 The Preamble to the Universal Declaration of Human Rights recognises the inherent dignity of all members of the human family.

28 AIR 1996 SC 922, *Chairman Railway Board v Chandrima Das* AIR 2000 SC 988.

29 Sec 315 (5) 1999 constitution of Nigeria.

30 The constitution of Kenya, 2010.

31 Sec 22, the constitution of Ghana, 1992.

32 16 (b), economic objectives.

33 2 (d) economic objectives.

34 17 (3) (d) social objectives.

35 17 (e) social objectives.

36 18 educational objectives.

37 (2002) 9 NWLR (pt 772) 222.

38 p. 3.

39 There are three types: reserved seats, that is, the minimum number of female legislators is established through reforms to constitution and electoral laws, as used in India and Pakistan. Party quota (aspirant and candidate) adopted in Sweden and England, whereby parties select a certain proportion of women among their candidates. Legislative quotas are mandatory provisions on all parties enacted through legal and constitutional reforms, observed in Argentina and France.

40 A 2009 study on Uganda parliamentarians refuted these assertions. Of the 332 parliamentarians, 102 were women. The study showed there were no significant statistical differences between women district and council legislators in terms of educational or work experience, compared to the men. They had previous electoral experience and were just as qualified as the men.

41 In the 1991 census, males made up 50.04 per cent and females 49.96 per cent. In the 2006 census, males made up 51.21 per cent and females 48.79 per cent of the population.

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