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Advancing women's labour right protection in Nigeria: Section 254C (2) of the Nigerian constitution in focus

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Abstract

Nigerian women face manifold discriminatory practices in the workplace and in the society generally. Regarding the workplace, national laws, regional and international treaties abound to protect the labour rights of women in Nigeria. However, although Nigeria acceded to several international instruments, a number of them have not been domesticated. Vide the provision of section 254C (2) of the Nigerian Constitution (Third Alteration) 2010, labour treaties have been applied by the National Industrial Court of Nigeria for the determination of industrial disputes in Nigeria thereby aligning Nigerian labour laws with international best practices for the better protection of the labour rights of workers including working women in Nigeria. The focus of this article is to evaluate the extent; the express incorporation of international labour laws into Nigerian legal system has promoted the rights of women in employment in Nigeria. The study employs a doctrinal approach to examine the benefits and limitation of such express incorporation of international labour laws and the need to specifically domesticate some labour treaties in Nigeria.

Keywords: Nigerian workplace, women labour rights, Nigeria labour laws, international labour law, Nigerian constitution

Introduction

Women are pertinent stakeholders in the development of any society. However, they have on the ground of sex differentiation been treated in a distinct manner by men^[1]. This distinct treatment is evident practically in all areas of women's lives. Over the years, Nigerian women have made meaningful contributions in all fields of human endeavour, such as health, teaching, agriculture, social work, and many more, but they still grapple with discrimination at work and in society at large^[2].

In the traditional Nigerian society, women were seen as persons who engaged in unpaid labour at home. They were regarded as persons whose natural role is to care for the children, other family members and to take care of domestic chores; hence they were deterred from involving themselves in any work which does not conform to these roles^[3]. However, in the present day, women have evolved from their traditional roles of engaging in unpaid labour such as weaving, food processing, and subsistence farming among others^[4], to thriving career women who have moved upward to top managerial positions of organisations^[5]. Despite this progress in the status of women in paid jobs, they still face discriminatory practices in the Nigerian workplace. In order to protect the rights of working women, the United Nations and the International Labour Organisation initiated diverse International instruments which require state parties to put appropriate measures in place to protect women in the work environment. Some of the international instruments that address the labour rights of women in the workplace are Equal Remuneration Convention,^[6] Convention on the Elimination of All Forms of Discrimination against Women, CEDAW^[7], Maternity Protection Convention,^[8] and Discrimination (Employment and Occupation) Convention^[9]. More so, although Nigeria has acceded to several international instruments, a number of them have not been domesticated. However, vide the express provision of section 254C (2) of the Constitution of the Federal Republic of Nigeria, (Third Alteration) 2010, International labour conventions and treaties have been applied by the National Industrial Court of Nigeria for the determination of industrial causes and matters in Nigeria thereby aligning Nigerian labour laws with international best practices for the better protection of the labour rights of workers including working women in Nigeria. The study seeks to examine the extent to which the express incorporation of international labour laws into Nigerian legal system has

promoted the rights of women in employment in Nigeria. Also, the study further identifies the benefits and limitation of such express incorporation of international labour laws and the need to specifically domesticate some labour treaties in Nigeria.

Women Labour Rights in Nigeria

Women's labour rights are the legal rights of women in relation to employment and labour related matters. As a result of the concession of the significance of protecting the labour rights of women, these rights have been avowed and guaranteed by various international and domestic instruments. More so, the right of women to work without discrimination on any ground is entrenched in legal instruments such as the CEDAW,^[10] the African Charter on Human and Peoples' Rights, (ACHPR)^[11] the International Covenant on Economic, Social, and Cultural Rights (ICESCR)^[12] and the ILO Equal Remuneration Convention of 1951. There are other labour rights of working women, and they include, but are not limited to equal training, advancement and development opportunities, among others. Over the years, the International Labour Organisation has passed several conventions, not just for the protection of women but for the enhancement of equality in the workplace.

In Nigeria, the labour rights of women are inclusive of the aforementioned rights. The Nigerian Constitution which is the organic or fundamental law, the *grundnorm*, fons et origo and the foundation of all laws,^[13] provides for fundamental rights of all its citizens in Chapter IV^[14]. However, Chapter IV of the constitution does not contain express provisions on women's rights, inclusive of labour rights for both genders. Even so, with respect to the labour rights of women, reference is often made to Chapter 11 of the Constitution which outlines the Fundamental Objectives and Directive Principles of State Policy. Section 17 (3) affirms the position of the Nigerian government with regard to equal access of both genders to economic and social resources respectively. The provisions of this chapter is however not enforceable as section 6(6) (c) eliminates the justiciability of questions concerning the chapter's core Objectives and Directive Principles of State Policy from the judiciary's authority^[15].

Inadequacy of Nigerian Laws for the protection of women in employment

Women experience discriminatory practices in the world of work in Nigeria. The Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Labour Act^[16] contain provisions aimed at combating the incidence of gender-related workplace discrimination thereby protecting the rights of working women in Nigeria. However, despite the said provisions, both legal structures are still inadequate for the protection of women in the work environment.

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

The Constitution in Chapter IV makes provision for fundamental rights of the citizens of Nigeria. These fundamental rights provisions are available to curb discriminatory acts which confront women in work settings in Nigeria. The Constitution^[17] guarantees the dignity of women against torture, inhumane or degrading treatment. Section 42(1) of the Constitution prohibits any

discrimination on the basis of sex and other listed factors. This section protects the rights of women in paid employment against discrimination on the ground of sex, as well as fostering the equality of both genders before the law. This section also complies with international conventions such as CEDAW, with respect to discrimination against women on the ground of sex. However, in spite of this legal protection, female employees are still exposed to discrimination on the ground of sex which hampers their labour rights in the workplace. In fact, there are job advertisements that expressly exclude women from applying, and in the unregulated private sector, potential employees are prohibited from getting pregnant for a set length of time or terminate their employment when they are discovered pregnant^[18].

Furthermore, section 42 of the Constitution is insufficient as it refers generally to non-discrimination sexually and other listed features. The Constitution does not make specific provision for economic rights and women's rights in Nigeria, and does not also contain protective provisions against discrimination in terms of cultural practices. The Ghana Constitution,^[19] for instance, apart from providing for equality and freedom from discrimination in section 17 of its provisions in Chapter Five on Fundamental Human Rights and Freedoms, specifically provides in section 24 for economic rights of all its citizens, in section 26 for cultural rights and practices and in section 27 for women's rights among others. Also, the Malawi Constitution^[20] provides for equality of its citizens in section 20 of its provisions in Chapter IV on Human Rights, and goes further to make specific provisions in section 24 for the rights of women against discrimination on the basis of their gender or marital status.

The Nigerian Constitution in Chapter 11 on Fundamental Objectives and Directive Principles of State Policy in section 17(3), among other things, prohibit all types of employment discrimination, especially sex and wages. Nevertheless, the provisions enshrined in this chapter are not actionable. They are mere guidelines for the government in policy formulation.

The Labour Act

The Labour Act contains provisions geared at protecting female workers in the workplace in Nigeria. Section 54 of the Act provides for maternity protection. Maternity protection is the protection given to women in formal employment in order to make them effectively combine both their reproductive and work roles^[21]. A woman is entitled to twelve weeks of maternity leave, which includes a mandatory six-week postpartum period, if she produces a medical certificate issued by a registered medical practitioner^[22]. A woman is also entitled to be paid not less than fifty per cent (50%) of her wages if she had been in the employment of her employer for a period of six months immediately prior to her confinement^[23]. Nursing mothers are entitled to half an hour twice a day for the purpose of nursing their babies during work hours^[24]. In all of this, the employer is not liable to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement.

Also, the Act in its protective provisions prohibits women from night work and underground work, with some exceptions respectively. However, the provisions of sections 55 and 56 of the Act are discriminatory as they limit

women's access to work and also prevent them from making a choice of their preferred work, which is contrary to the 1951 International Equal Remuneration Convention (No. 100), which calls for equal job opportunities for men and women. The violation of the provisions of sections 54, 55 and 56 respectively is an offence under the Act.

Having outlined the protective provisions of the Labour Act, it is worthy to mention that the Act contains no specific provision prohibiting discrimination; neither does it contain any provision for equal employment opportunities for all Nigerians, irrespective of sex. With regards to the right to maternity protection of women under the Nigerian Labour Act, the provisions are inadequate and not in compliance with international best practices on maternity protection of working women. While the Labour Act only provides for 12 weeks of maternity leave, which falls below the international standard, the Maternity Protection Convention of 2000 (No. 183) ^[25] stipulated a 14 week maternity leave, and the Maternity Protection Recommendation of 2000 advocates for the extension of maternity leave to 18 weeks. Remarkably, despite the provision on maternity leave in the Labour Act, some employers have exceeded it, which shows the significance of maternity protection for women. For instance, the Nigerian government reviewed maternity leave for female employees to 16 weeks ^[26]. In the same vein, the Lagos State Government and the Enugu State Government, respectively, increased the duration of maternity leave for their female workers to twenty-four weeks for the first two deliveries and twelve weeks for subsequent deliveries. Both states also introduced paternity leave into their labour force. In Enugu State, male officers are entitled to three weeks of paternity leave for the first two deliveries and shall not be entitled to any paternity leave after that. In Lagos State, fathers under the employment of the Lagos State Government are granted two weeks (10 working days) of paternity leave on their spouse's first two deliveries and none subsequently ^[27].

Furthermore, while the provisions of maternity protection in section 54 of the Act is limited to maternity leave of 12 weeks and an hour break for a nursing mother, the current convention No. 183 has gone beyond these provisions to include some other components such as the scope of women covered, health protection, maternity leave, and leave in case of illness or complications before or after the maternity leave period, benefits and payments during the leave, employment protection and non-discrimination, breastfeeding and child care facilities. More so, the sanctions for the violation of the maternity protection rights of women in employment provided under the law are inadequate. It is worthy to mention here that Nigeria is yet to ratify the Maternity Protection Convention of 2000 (No. 183).

Applicability of International Labour Law in Nigeria/Constitutional History of Section 254C (2) of the 1999 Constitution

International labour law are a body of rules and principles concerning the relationship between employers, workers, and governments ^[28]. They are legal instruments developed by the ILO that establish rights at work. These legal instruments are legally binding international treaties that can be ratified by member states, or recommendations, which are non-binding guidelines ^[29].

Before the Third Alteration Act 2010, that established the National Industrial Court of Nigeria (NICN), Nigeria being a dualist state, international instruments, including labour and labour-related instruments, had no force of law without legislative intervention, as they must be domesticated by the National Assembly in line with section 12 of the Constitution before they can be enforced. The Nigerian constitutional amendment via the (Third Alteration) Act No. 3 of 2010, created a new section 254C (2) in the constitution which resulted in a shift from the dualist system to the monist system with respect to the application of international conventions related to labour rights by the NICN ^[30]. The Constitution ^[31] conferred on the NICN the jurisdiction to adjudicate on matters pertaining to the application of any international legal instrument relating to labour and labour relations Nigeria has ratified. The provisions of section 254C (2) of the Nigerian Constitution paved the way for the direct application of labour and employment related treaties by the NICN, without the need for the domestication of such treaties, ^[32] as required in the case of international instruments outside the domain of employment under the dualist legal approach. Thus, treaties ratified by Nigeria are applicable by the NICN to promote and protect the labour rights of women.

Benefit of Express Incorporation of International Labour Law in Nigeria

The incorporation of international labour law in Nigeria is beneficial to the workforce in Nigeria as it paves way for decent work agenda for workers and the protection of their labour rights. Also, international labour law ensures that economic growth and development of the country goes with the creation of decent work, thereby reducing the rate of poverty in the country.

Pointedly, the incorporation of international labour law in Nigeria has led to the improved protection of the labour rights of women workers. In 1985, Nigeria ratified CEDAW and its provisions have been utilised by the NICN pursuant to section 254C (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to advance the labour rights of women as well as protect them against workplace discrimination in Nigeria. Some of the provisions of CEDAW on discrimination against women in employment are the right to work, the right to promotion, the protection of health and safety in working conditions, the right to equal job opportunities, uniform pay, and job security ^[33]. However, the drawback of this instrument is that it is yet to be domesticated pursuant to section 12 of the Nigerian Constitution despite its application by the NICN.

More so, in line with the provisions of section 254C (2) of the 1999 Constitution, international treaties become applicable and enforceable in the protection of women's labour rights in Nigeria once they conform with the sole requirement of ratification. Consequently, the NICN in its protective stand on the labour rights of women employees in Nigeria has made use of ratified international treaties in a number of cases in light of section 254C (2) of the Constitution. The case of *Ejike Maduka v Microsoft Nigeria Ltd & Ors* ^[34] shows the benefit of the bold application by the court of international legal instrument in enforcing the rights of female employees in the world of work in Nigeria. The NICN awarded damages for sexual harassment, applied CEDAW and the ILO Convention No. 111 to determine the allegation of sexual harassment

brought against the country manager of Microsoft Nigeria Ltd. The court held that the aforementioned instruments 'have been ratified by Nigeria and are applicable to construe the fundamental rights of the applicant expressly guaranteed under the 1999 Constitution as amended, the African Charter on Human and Peoples' Rights, and other international conventions against gender discrimination.' In a similar vein, the court had made use of international law to strengthen its decision based on domestic law. The NICN in *Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors*,^[35] determined that the claimant had been dismissed on account of her pregnancy after evaluating the evidence presented before it. This act constituted a breach of her rights to protection from discrimination and inhuman, malicious, oppressive and degrading treatment under the Constitution, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and the ILO Convention No.111 of 1958 on discrimination. The court stated that its duty to prevent a breach of the provisions of the fundamental rights sections of the 1999 constitution is heightened by the Nigerian obligations to the comity of nations which also forbids such practice, (African Charter and the ILO Convention No.111) and this obligation is reflected in section 254C (1) (f) & (h) of the constitution.

Labour treaties such as Discrimination (Employment and Occupation) Convention and the Equal Remuneration Convention which have met the requirement of ratification laid down by section 254C (2) of the Nigerian Constitution can be used by the court to enhance the protection of labour rights of women in paid employment in the workplace in Nigeria. Very remarkably, the NICN employed the Discrimination (Employment and Occupation) Convention (No. 111) of 1958 to decide the issue of sexual harassment in the case of *Ejike Maduka v Microsoft Nigeria Ltd & Ors*, and also to strengthen its decision based on domestic law in *Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors*.

Therefore, in the light of the above, the incorporation of international labour law into the Nigerian legal system cannot be underestimated as these ILO instruments via their application by the NICN have helped to promote the protection of the labour rights of women in paid jobs in Nigeria.

Limitation of Section 254C (2) of the Nigerian Constitution

Section 254C (2) of the Nigerian constitution has aided the application and enforcement of labour and employment related international instruments by the NICN which has in turn promoted the protection of the labour rights of women in Nigeria. However, this section is not exempted from limitation in its operation. As aforementioned, the sole requirement for the application of labour and labour related international legal instruments in Nigeria, is the ratification of such instruments as entrenched in section 254C (2) of the constitution. Thus, where this requirement is not observed, it affects the application of such unratified instrument.

Very remarkably, one of the ILO Convention that establishes the international best standard on maternity protection for women that could have been of benefit to working women in Nigeria is the Maternity Protection Convention, 2000 (No. 183). The provisions of this convention go beyond maternity leave and nursing breaks,

as stipulated in the Nigeria Labour Act on maternity protection. Nigeria has not ratified the convention, as required by section 254C (2) of the 1999 Constitution, which presents a hurdle to the direct application of the convention by the NICN to advance and safeguard the maternity rights of working women in Nigeria. The importance of the maternity protection of women in employment in Nigeria cannot be over emphasised. As a result of the pertinence of this labour right of women, the Nigerian government and the Lagos State Government and Enugu State Government respectively as stated in this study have gone beyond the provisions on maternity leave encapsulated in the Labour Act. Thus, with the recent provisions on maternity protection in the Maternity Protection Convention, 2000, there is need to ratify the said convention by the Nigeria government in order to align our labour law and practice to global standards.

Conclusion

This work examined the advancement of women's labour rights protection in employment in Nigeria, focusing on the provisions of section 254C (2) of the 1999 Nigerian Constitution. The work also discussed the extent to which the express incorporation of international labour laws into Nigerian legal system has promoted the rights of women in employment in Nigeria, as well as the benefits of the incorporation of international labour law in the Nigerian legal system, and the limitation of section 254C (2) of the Constitution.

The study found that the legal framework for the protection of the labour rights of women in the workplace contained in the Constitution and the Labour Act are inadequate. The Constitution does not provide for a more inclusive right of women. Also, the provisions of the Labour Act on the maternity protection of working women in Nigeria is far below the international Labour Standards on the maternity protection of women. Also, although section 254C (2) of the Constitution is restricted to the sole requirement of ratification in the application of labour and employment related international conventions or treaties by the NICN, the section is a positive development which has helped in promoting the protection of the rights of working women. This can be gleaned from the protective stance of the NICN on the labour rights of female employees in Nigeria against discrimination, having utilised ratified international treaties in several cases.

The study goes further to suggest that the Maternity Protection Convention, 2000 (No. 183) should be ratified by Nigeria to enhance our domestic practice, thereby making Nigeria labour law to be in tune with global practice.

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