



**PROBLEMS AND PROSPECTS OF GENDER MAINSTREAMING IN
PUBLIC POLICY WITHIN NIGERIAN STATUTORY HUMAN
RIGHTS DELINEATIONS**

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Abstract

This paper attempts to identify the public policy pitfalls bedevilling gender mainstreaming in human rights arrangements and proffers suggestions targeted at surmounting such impediments to effective gender mainstreaming in Nigeria. In examining social and cultural constructs impeding effective gender mainstreaming in Nigeria, this paper argues that notwithstanding international human rights framework and the constitutional trajectories of jurisdictions other than Nigeria, the efficacy of gender mainstreaming paradigms is weakened by social and cultural normative values, the gender insensitivity of the Constitution of the Federal Republic of Nigeria (1999) (as amended) and other enabling statutes as well as lack of political will.

1. Introduction

As a creature of public policy, gender mainstreaming is a strategy for promoting gender equality involving the inclusion of gender perspectives in every aspect of development including policy development, research, advocacy, legislation, resource allocation, planning, implementation and monitoring of programmes and projects.¹ The main objective of this public policy construct is the institutionalisation of gender equality by the adoption of

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1. United Nations Office of the Special Adviser on Gender Issues and Advancement of Women, Supporting Gender Mainstreaming, United Nations Entity for Gender Equality and the Empowerment of Women, p. 3 available at www.un.org/womenwatch/osagi/gendermainstreaming.htm. accessed on 3rd December 2021.

gender sensitive norms in all aspects of public policy. It is seen as the most contemporary indicator of gender equality and is widely promoted by international organisations like the United Nations, the Council of Europe, the European Union, *etcetera*. While it is viewed as a political strategy, a theoretical ideal and a policy approach, it remains a cardinal indices by which the actualisation of sustainable development goals of any nation is assessed². Embedded in the focal point of change; gender mainstreaming focuses on organisational culture, processes and structures within the particular construct of public policy.³

Gender delineations of human rights have in contemporary times been instilled in the *corpus* of the international human rights law framework. Notions of functional and comprehensive human rights as being equally applicable to both men and women are core values of international human rights framework, giving rise to the increasingly *clichéd* phraseology and subjectively overused convenient maxim that, women rights are human rights.⁴ International and regional instruments of women human rights include the Universal Declaration on Human Rights (1948),⁵ the International Covenant on Civil and Political Rights,⁶ the International Covenant on Economic, Social Rights and Cultural Rights,⁷ the Convention on the

² M. Daly, Gender Mainstreaming in Theory and Practice, in *Social Politics: International Studies in Gender, State and Society*, Vol. 2 No.3 (2005) p.433 available at <https://academic.oup.com/sp/article/12/3/433/1679271> last accessed on 3rd December 2021.

³ *Ibid* p.435.

⁴ 'Womens Rights are Human Rights', (New York and Geneva, United Nations Human Rights Office of the High Commissioner, 2014) A United Nations publication available at <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> last accessed on 3rd December 2021.

⁵ 217 (III) A. Paris, 1948. Available at <http://www.un.org/en/universal-declaration-human-rights/> (last accessed on November 11 2018).

⁶ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966)

⁷ GA res. 2200A (XXI), 21 UN GOAR Supp. (No 16) at 49, UN Doc. A/6316; 993 UNTS 3; 6 ILM 368 (1967).

Elimination of All Forms of Discrimination Against Women,⁸ the African Charter on Human and Peoples Rights⁹ and the International Consensus in the Beijing Platform for Action.¹⁰

The 1997 agreed conclusions of the United Nations Economic and Social Council (ECOSOC)¹¹ states that it is imperative for gender dimensions to be injected into any planned action including legislation, policies and programs. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) sets the guiding principles for gender mainstreaming to include recognition, diversity and intersection, equality, equity, empowerment and agency, participation and parity, partnership between men and women, and social justice.¹²

Regionally, the European Union Treaty of Amsterdam (1997) requires that signatory countries consider gender perspectives and analyses in decision making at all levels, including equality of men and women in industry and in the labour market.¹³ In the African context, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa¹⁴ adjures the African Union States to include in their national constitutions and legislative

⁸ United Nations Treaty Series, Vol. 1249, p.13 (1979).

⁹ CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982).

¹⁰ United Nations, Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, 25 October 1995.

¹¹ Gender Mainstreaming, Extract from the Report of the Economic and Social Council for 1997 (A/52/3, 18 September 1997). Available at www.un.org/womenwatch/daw/csw/GMS.PDF last accessed on 6th December 2021

¹² UNESCO Priority Gender Equality Action Plan 2014-2021. Available at www.unesdoc.unesco.org/images/0022/002272/227222e.pdf last accessed on 6th December 2021

¹³ The Treaty of Amsterdam amending the Treaty on the European Union, the Treaties establishing the European Communities and Other Related Acts. OJC 340, 10.11.1997. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FTEXT> last accessed on 6th December 2021

¹⁴ Also referred to as the Maputo Protocol available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women> last accessed on 6th December 2021

instruments the principle of equality between men and women and ensure its effective application.¹⁵ It also requires that member States integrate a gender perspective in their policy decisions, legislations, development plans, programmes and activities and in all other spheres of life.¹⁶

In Nigeria, the gender mainstreaming as a facet of public policy is encumbered by differing factors which include the constitutional and legal framework, policy strictures and the statutory and legislative bars to the domestic enforcement of international instruments in Nigeria. The main statutory framework for human rights Nigeria is the Constitution of the Federal Republic of Nigeria (1999) (as Amended).¹⁷

While international and regional instruments have attempted to inject both gender neutrality and gender specificity to human right predilections within the ambit of international and regional frameworks, the domestic postulations of Nigerian law remain silent on gender issues mainstreaming. Some reasons for these constitutional and legislative silences will be proffered in the course of this discourse.

In Nigeria, the ideal of gender mainstreaming *via* public policy interventions is negatively beset by differing factors which include the constitutional and legal framework, policy strictures and the statutory and legislative bars to the domestic enforcement of international instruments in Nigeria. The main statutory framework for human rights in Nigeria is the Constitution of the Federal Republic of Nigeria (1999) (as Amended).¹⁸ International and regional instruments affecting gender parity and women rights in particular include the Universal Declaration on Human Rights

¹⁵ Article 2 (1) (a) *Ibid.*

¹⁶ Article 2 (1) (c) *Ibid.*

¹⁷ Cap. C23 Laws of the Federation of Nigeria (2004) hereinafter called CFRN 199.

¹⁸ Cap. C23 Laws of the Federation of Nigeria (2004) hereinafter called CFRN 1999.

(1948),¹⁹ the International Covenant on Civil and Political Rights,²⁰ the Convention on the Elimination of All Forms of Discrimination Against Women,²¹ the African Charter on Human and Peoples Rights²² and the International Consensus in the Beijing Platform for Action.²³ The above stated domestic and international legal framework as well as the public policy responses to gender mainstreaming of the Nigerian State, shall constitute the main focus of this paper.

2. A Comparative Analysis of Jurisdictional Constitutional Interventions for Gender Mainstreaming

The Constitution of the Federal Republic of Nigeria, by the combined effect of Sections 15, 16 and 17 establishes national integration, the Directive Principles of State policy and the ground upon which the social policy of the Nigerian State are founded. Further to this, Section 42 of the same constitution establishes freedom from discrimination as a specifically enunciated human right. While constitutional provisions are clear on the freedom of every Nigerian to participate in democratic processes regardless of gender, there is no specific constitutional provision establishing affirmative action in favour of women within the contextual framework of the Nigerian *grund norm*.

Indeed it would be apposite to agree that the CFRN 1999 is gender insensitive as the law appears to minimise gender roles and denies the relevance and import of affirmative action being a necessary factor in bringing women to the frontlines in the interest of gender mainstreaming. Oke has noted the negative outcomes associated with the silence of public policy interventions particularly in as affecting the participation of women in

¹⁹ N.5 217 (III) A. Paris, 1948. Available at <http://www.un.org/en/universal-declaration-human-rights/> (last accessed on March 11 2022).

²⁰ N.6 GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966).

²¹ N.8 United Nations Treaty Series, Vol. 1249, p.13 (1979).

²² N.9 CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982).

²³ N.10 United Nations, Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, 25 October 1995.

democracy and advances the need for constitutional reform which would serve to make women participation in the frontlines of democracy a matter of law and not a matter of executive or political party discretion.²⁴

Constitutional pathways for gender mainstreaming adopted by jurisdictions other than Nigeria have mainly been achieved through explicit constitutional affirmative action which have in turn spurred interventions in political establishments, processes and social norms generate reform in the area of increased female representation in political positions and align the interests of women in government policy initiatives and decision making. These reforms have in turn brought more women into power and are gradually changing negative perceptions of the legitimacy of women in power and informed positive alignments to gender mainstreaming.

The importance of gender equality is emphasized in Section 1 of the Constitution of the Republic of South Africa which states that the Republic of South Africa in one, sovereign, democratic state founded on the principles of human dignity, the achievement of equality and advancement of human rights and freedoms. Chapter 2 of the Constitution of the Republic of South Africa entrenches the Bill of Rights.

In specific terms, Section 9 of the South African *grund norm* states that equality includes the full enjoyment of all rights and freedoms and that legislative and other measures should be designed to protect or advance persons, or categories of persons who are disadvantaged by reason of unfair discrimination.²⁵ This constitution further provides that the State may not unfairly discriminate against anyone on any grounds including race, gender,

²⁴ L. Oke, Democracy, Women's Political Participation and the Policy Environment in Nigeria, in *Developing Country Studies*, Vol. 5 No. 10 (2015) p.12. Accessed from <https://www.iiste.org/Journals/index.php/DCS/article/download/22466/22679> last visited on 11th March 2022.

²⁵ Section 9 (2) of the Constitution of the Republic of South Africa (1996) available at <https://www.gov.za/documents/constitution/chapter-2-bill-rights#7> last accessed on 11th November 2018

sex, pregnancy, marital status, and *etcetera*.²⁶ The Constitution further adjures the courts to develop the common law in areas where the legislation does not adequately provide give effect to and limit the ambit of the rights under consideration.²⁷

The South African constitution adopts a plethora of human rights concepts taken from the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women.

Constitutional amendment in France paved the way for gendered approaches to democracy and policy. In 1999, Constitutional Law No. 99-569 amended Article 3 of the French Constitution by injecting paragraph 4 which states that 'the law shall favour equality of men and women to have access to electoral mandates and hold elective office. This amendment served to make constitutional the equal access of men and women to direct and indirect democratic processes as a matter of law. It also provided that political parties shall contribute to the principles set down in Article 3, (that is the principle of equal access of men and women to hold elective offices and functions), in accordance with the provisions of the law.²⁸ Further to the forgoing, in 2000, the Law on Equal Access of Women and Men to Elective Offices and Functions was enacted resting on the constitutional foundation provided by that jurisdiction.²⁹

The Italian Constitution by way of Articles 3 and 51 provides for gender parity in democratic and policy processes. Paragraph 1 of Article 3

²⁶ Section 9(3) *Ibid*.

²⁷ Section 3 (a) and (b) *Ibid*.

²⁸ The Constitution of France available at https://www.constituteproject.org/constitution/France_2008.pdf?lang=en last accessed on 11th March 2022

²⁹ The French Parity Act, Republic of France Act No. 2000-493 of June 6 2000 available at <https://www.pacwip.org/resources/wip-legislationfrench-parity-act-republic-of-france-act-no-2000-%C2%AD493-to-promote-equal-access-of-women-and-men-to-electoral-mandates-and-elective-offices/> last accessed on 11th March 2022.

provides that all citizens shall have the same social dignity and shall be equal before the law regardless of sex, race, language, religion, political opinion or personal or social condition'.³⁰ Paragraph 2 of Article 3 further provides that, It is the obligation of the Republic to suppress any economic or social obstacles that hinder, and therefore limit the freedom and equality of all citizens, the full development of individuals and the meaningful participation of all workers in the political, economic and social organisation of the country'.³¹ Article 51 stated that 'all citizens of both sexes shall be entitled to hold public office and elective office in conditions of equality according to the requirements established by law'.³²

Resting on the aforesaid constitutional foundation, Law No.81/1993,³³ which is the statutory regulator of local and provincial elections, provided that, for elections into the Town Halls (*Consiglio Comunale*), the political parties were mandated to include a minimum number of women on their electoral ballots. This law stipulated that neither gender could have a presence of less than twenty five percent on municipal lists. Additionally, Law No.277/1993 which regulated elections into the Italian Congress provided that political parties must present electoral ballots in alternating gender order for elections subject to the aforementioned proportional system.³⁴

These laws, though repealed pursuant to a declaration of unconstitutionality by the Italian Constitutional court,³⁵ was replaced by Constitutional Law No.3/2001 which added a seventh paragraph to Article 117 of the Italian Constitution which states that, Regional laws shall suppress any

³⁰ Article 3 of the Constitution of the Italian Republic available at https://www.senato.it/documenti/repository/isitituzione_inglese.pdf last accessed on 11th March 2022.

³¹ *Ibid.*

³² Article 51 *Ibid.*

³³ Available at www.ilo.org/dyn/natlex/docs/WEBTEXT/54507/65185/E99ITA01.htm last accessed on 11th March 2022.

³⁴ *Ibid.*

³⁵ Corte cost. decision no.422/1995.

hindrance of full equality between men and women in social, cultural and economic life and shall promote parity of access to elective office between men and women. Additionally, Constitutional Law No. 1/2003 added the following sentence to the first paragraph of Article 51 which now reads, all citizens of both sexes shall be entitled to hold public office and elective office in conditions of equality according to the requirements established by law, to such ends, the Republic shall use special measures to promote equal opportunities among men and women.

In light of the foregoing, it is respectfully submitted that for purposes of gender mainstreaming particularly with respect to electoral and democratic processes, constitutional intervention becomes imperative. In jurisdictions where such constitutional foundations have been laid, enabling laws ensuring gender parity in the democratic processes are enacted. The purpose of these laws are to give statutory flavour and by so doing mandatorily bring women to the forefront of democracy. In the Nigerian constitutional context however, the cursory referencing to equal rights to democratic processes and participation which is indeed reflexive of the gender insensitivity espoused in the *grund norm*, make statutory intervention a discretionary as opposed to mandatory matter.

3. A Summation of Nigerian Responses to International Soft Law Predilections of Gender Mainstreaming

International standards for gender mainstreaming are as encapsulated in the evolution of rights enunciated in the Universal Declaration of Human Rights,³⁶ through the International Covenant on Civil and Political Rights,³⁷ the Convention on the Elimination of All Forms of Discrimination Against Women,³⁸ African Charter on Human and Peoples' Rights³⁹ and the

³⁶ N. 5.

³⁷ N. 6.

³⁸ N. 8.

³⁹ N. 9.

International Consensus in the Beijing Platform for Action.⁴⁰ These international instruments set the international standards incumbent on State parties to conform to in order to actuate women participation in democracy across jurisdictional paradigms.

(i) **The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) sets international benchmarks for the protection of human rights generally. Beyond the general exposition on the particular constituents of rights accruable to human beings and the setting out of rights to be protected universally, it does not particularly set out the parameters for the inclusion of women in the frontlines of democracy. Paragraph five of the Preamble of the UDHR states thus, 'Whereas the peoples of the United Nations have in the Charter affirmed their faith in fundamental human rights, in the dignity and worth of the human person and in equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom....'⁴¹

Further, Article 7 of the UDHR states that, all are equal before the law and are entitled without any discrimination to the equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.⁴² It is apposite to surmise from the foregoing that the UDHR is a declaratory document is not embedded with specificity in gender mainstreaming issues.

However, the revolutionary status of the UDHR lies in the intent behind the crafting of the document which was to set general international minimum standards of adherence by State parties to regional and international instruments. The Declaration has spawned international and regional

⁴⁰ N. 10.

⁴¹ See n.5.

⁴² *Ibid.*

instruments with varying degrees of modalities for compliance by state parties as well as monitoring mechanisms and judicial options for redress where rights have been infringed upon.

Section 42 within Chapter 4 of the CFRN (1999) (as amended) has encapsulated the rights entrenched in the UDHR and includes the right to freedom from discrimination as part of the Nigerian corpus of fundamental human rights. It however goes without saying that as a declaratory document, the UDHR disadvantaged in enforcing a right based approach to the specific issues of gender mainstreaming.

Kurtz however argues that rights declared are not always rights given and that statements from international bodies even where ratified by national governments for the purposes of sustaining crucial economic and political ties are insufficient to combat cultural norms and practices which defeat the purpose for which the rights were initially enunciated.⁴³ It is submitted with respect that this position encapsulates the dilemma of women and the dearth of affirmative action for gender mainstreaming. The purposes of UDHR appear defeated by entrenched cultural patriarchy which continues to oppose gender mainstreaming as a nod to cultural perceptions of gender subservience to the detriment of the female gender.

(ii) **The International Covenant on Civil and Political Rights and Gender Mainstreaming**

The International Covenant on Civil and Political Rights (ICCPR) commits the states signatories to protect and respect the civil and political rights of individuals. This covenant applies to a broad fulcrum of human rights including political participation,⁴⁴ equality⁴⁵ and non discrimination.⁴⁶ While Article 25 of the ICCPR grants individuals the right to participate in the

⁴³ L.R. Kurtz, *Womens Rights, Human Rights, and Duties: From Domination to Partnership*, in *Interdisciplinary Journal of Partnership Studies*, Vol. 4 No.1 (2017) p.4.

⁴⁴ Article 25 of the ICCPR n.6.

⁴⁵ *Ibid* Article 26.

⁴⁶ *Ibid* Article 27.

electoral process either directly or indirectly through representation, it is submitted with respect that the covenant is not gendered and does not specifically address affirmative action and gender mainstreaming.

Article IV of the ICCPR permits derogations from its provisions in times of public emergency but fails to define exactly what constitutes public emergency, it is therefore apposite to state that this is claw back provision is riddled with propensity for abuse in the context of state party compliance. Article IV (3) also specifies acceptable derogation measures which include prolonging detention without trial and banning political organisations.

The ICCPR is fettered with respect to enforcement as it relies monitoring and evaluating mechanisms whereby state signatories are expected to submit periodic reports of compliance with its provisions. Civil society groups are also given the opportunity to submit shadow reports which contain analysis of state party compliance with the requirements of the ICCPR. Nigeria acceded to the ICCPR on 29th July 1993. Within the internal jurisdictional dynamic of this accession lies the impediment of the ungratified status of the covenant in Nigeria. Nonetheless, the rights under consideration are part of fundamental human rights contained in Chapter IV of the CFRN.

Additionally, section 12 of the CFRN provides for domestication of treaties entered into by Nigeria before such treaties can be accorded the status of municipal law. This provision fetters the domestic application of the ICCPR and other treaties which have not been so domesticated.⁴⁷ Thus the direct application of the ICCPR in Nigeria is limited as it cannot be said to rank *parri passu* with municipal law.

⁴⁷ See also *Abacha v Fawehinmi* (2006) 6 NWLR 228, See also J.A. Dada, Impediments to Human Rights Protection in Nigeria, in *Annual Survey of International and Comparative Law*, Vol. 18 No.1 (2012) p.67

(iii) **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The Beijing Declaration and Nigerian Responses to Gender Mainstreaming**

CEDAW established an international bill of rights for women and is a necessary premise for an analysis of gender perspectives on women.⁴⁸ The Preamble to the Convention acknowledges the disadvantaged economic positions of many women in situations of poverty where women have the least access to food, health, education, training and opportunities for employment and other needs.

As a backdrop to the different Articles in CEDAW highlighting the various forms of discrimination against women, Article 1 defines the term discrimination against women while Article 2 establishes the modalities to be adopted by States Parties to ensure the elimination of all forms of discrimination against women. Articles 7 and 8 guarantee women equality in political and public life with particular emphasis on voting, participation in government, and participation in non-governmental organizations and associations concerned with the public and political life of a country. These articles are foundational in the requirement of specificity in outlining gender discrimination against women in the front lines of democracy.

The Convention by way of its Committee on the Elimination of All Forms of Discrimination Against Women to examine State Parties responses by way of implementation of the requirements of this convention.

CEDAW is fettered in implementation due to the fact of its non domestication as Nigerian municipal law and its provision for State Party

⁴⁸ Convention on the Elimination of all forms of Discrimination Against Women opened for signature March 1, 1980, 19 I.L.M. 33, U.N. Doc. A/34/180 (hereinafter referred to as CEDAW).

reservations where its provisions do not accord with the internal dynamics of the States.⁴⁹ It is Minors view that the reservations as provided for under CEDAW have weakened the effect of the Convention as the bill of rights for women.⁵⁰ It is submitted that the perceived failure of CEDAW is overshadowed by State Parties' domestic responses to the gender permutations inherent in the articles of the Convention. The aim of the Convention was to set international standards for the elimination of discrimination against women. State party roles should be to implement these standards within the context of domestic legislations.⁵¹

The Beijing Declaration and Platform for Action⁵² as an offshoot of the Fourth World Conference on Women (1995) espoused as key areas of concern the institutional mechanisms for the advancement of women and women in power and decision making among other areas of concern. In furtherance of these objectives, the Beijing Declaration encourages participation of women in all aspects of human endeavour as full and equal partners of men.⁵³ The Declaration is of the firm resolve that the advancement of women in all aspects of endeavour on equal standing with men is the only way to sustainable development and inherently necessary for the acquisition of social, economic and environmental security among all people.⁵⁴ The Beijing Declaration further highlighted the rigidity of gender roles as well as the limited access of women to power, education and training.

Nigerias response to these international initiatives lay in the establishment of a National Gender Policy (2021-2026) which has as one of

⁴⁹ Vienna Convention on the Law of Treaties May 23, 1969, 1155 U.N.T.S 331, at Article 2 (d).

⁵⁰ J.A. Minor, *An Analysis of Structural Weaknesses in the Convention on the Elimination of all Forms of Discrimination Against Women*, in Georgia Journal of International and Comparative Law, Vol. 24 No. 1 p.137.

⁵¹ See n19 to n.22 above.

⁵² See n.10.

⁵³ *Ibid* p.25.

⁵⁴ *Beijing Declaration and Platform for Action*, Advanced Unedited Draft, U.N. Fourth World Conference on Women, Platform for Action 43, September 15, 1995.

its goals the incorporation of CEDAW and other global and regional frameworks that support gender equality and women empowerment in the country's legislative and other processes.⁵⁵ This policy also recommends that thirty five percent of public offices be reserved for women. In recent times, this has not been complied with as women occupy a meagre nineteen percent of elective and appointive positions under the current dispensation. It goes without saying therefore that public policy failures in encapsulating gendered interventions are outpourings of statutory indifference to specificity in gendered perspectives.

Despite the affirmative action principles espoused by CEDAW,⁵⁶ the precariousness of the position of women at the frontlines of democracy is further exacerbated by the Federal Character Principle which is targeted at equal representation of all the geo-political zones of Nigeria in governance.⁵⁷ Affirmative action policies in the main require State Parties to CEDAW to take positive measures which will bridge the gap of past marginalisation and discrimination against women. Nigerian political parties' responses to encourage a gendered approach in the frontlines of democracy include selectively providing affirmative action for women participation in democracy.⁵⁸

(iv) Gender Mainstreaming in The African Charter on Human and Peoples Rights

⁵⁵ National Gender Policy 2021- 2026 available at www.aacoalition.org/national_policy_women.htm last accessed on 11th March 2022, p.47.

⁵⁶ Article 4 of CEDAW states that State Parties are required to take temporary special measures to accelerate de facto equality between men and women.

⁵⁷ Section 223 (1) (b) of the CFRN 1999, see also L. Adamolekun, J. Erero and B. Oshionebo, "Federal Character" and Management of the Federal Civil Service and the Military, in *Publius: The Journal of Federalism*, Vol. 21 No.1 1991, p.75.

⁵⁸ See the Manifesto of the Peoples' Democratic Party, accessed from www.inecnigeria.org/wp-content/uploads/2018/03/PDP-Manifesto.pdf last accessed on 12th March 2022.

Article 2 of this Charter enshrines the principle of non discrimination on general grounds while Article 18 prohibits discrimination against women in particular and calls on State Parties to eliminate discrimination against women and entrench the rights of women as espoused by international conventions. Further to this, the Protocol to the African Charter of Human and Peoples Rights on the Rights of Women in Africa (2003),⁵⁹ enjoins State parties to adopt include in their constitutions and adopt legislative means the principle of equality between men and women⁶⁰ and integrate a gender perspective in policy decisions, legislations, development plans, programmes and activities. Article 9 grants women the right to participate in the political and decision making process and makes provision for non discrimination, equal representation of women, *etcetera*.

The Nigerian National Assembly in March 1983 incorporated the entirety of the African Charter into the body of Nigerian domestic legislation.⁶¹ The challenges of enforcement of the hitherto constitutionally enforceable provisions notwithstanding,⁶² the African Charter and the protocols arising there from also fall of international legal standards by the plethora of claw back provisions which has the effect of granting state parties the right to derogate from its provisions where it appears expedient in the circumstance to do so.

According to Mutua, the most serious flaw of the Charter concerns its claw back clauses⁶³ and it is said to be a distinctive feature of the Charter allowing breaches of obligations for a number of ascertainable reasons in contradistinction to derogation clauses of other systems, universal and

⁵⁹ Also known as the Maputo Protocol n14.

⁶⁰ Article 2 (1) (a).

⁶¹ The African Charter Cap A9 Laws of the Federation of Nigeria (2004).

⁶² See J.A Dada (n.35).

⁶³ M W Mutua, The African Human Rights System: A Critical Evaluation, in *Human Development Reports, A United Nations Development Program Human Development Report Office Paper No HDOCPA-2000-15* at <http://hdr.undp.org/sites/default/files/mutua.pdf> accessed on 11 November 2018. P.3.

regional, which explicitly spell out circumstances in which rights may be curtailed and stipulate rights which cannot be derogated from and must be respected.⁶⁴ For instance, the Charter contains clauses such as ‘except for reasons and conditions previously laid down by law’⁶⁵, ‘subject to law and order’,⁶⁶ and ‘provided he abides by the law,’⁶⁷ with the potential of neutralising the potency of the provisions of the Charter.⁶⁸

4. Societal Impediments to Public Policy Interventions for Gender Mainstreaming in Nigeria.

Cultural norms militate against advancement of gender mainstreaming in Nigeria. Nigerian patriarchal cultures with characteristic offshoots of discrimination, exclusion, gender imbalance and inequality provide infertile terrain for the blossoming of gender parity and gendered representation.⁶⁹ These cultural strictures have resulted in the largely excluded dynamics of gender balance *via* public policy.

Poverty prevents women from fully participating in democratic processes which would assure inclusion as the co-framers of gendered

⁶⁴ Mutua (*ibid*), R Gittleman, The African Charter on Human and Peoples’ Rights: A Legal Analysis in *Virginia Journal of International Law* 22(1982) p.667 accessed at www.corteidh.or.cr/tablas/4558.pdf accessed on 11 November 2018; cf R. M. D’Sa, The African Charter on Human and Peoples’ Rights: Problems and Prospects for Regional Action in *Australian Yearbook of International Law* (1983) 10(3) p. 101 available at <http://www.austlii.edu.au/au/journals/AUYrBkIntLaw/1983/3.pdf> accessed 12 March 2022.

⁶⁵ Article 6 of the African Charter on Human and Peoples Rights (n.10).

⁶⁶ Article 8 *Ibid*.

⁶⁷ Article 9 *Ibid*.

⁶⁸ P De Voss , ‘A New Beginning?, the Enforcement of Social, Economic and Cultural Rights Under the African Charter on Human and Peoples Rights’, in *Journal of Law, Democracy and Development* Vol.6 (2014) p.52.

⁶⁹ K. A. Bolaji, Towards Greater Participation of Nigerian Women in Democratic Governance and Development: Challenges and Prospects, in *Journal of Gender and Behaviour*, Vol. 5 No. 2 p.1406.

policies.⁷⁰ Women intending to play vital roles at the forefront of democracy contend with the high cost of political and democratic participation. This poverty is further exploited by political leaders who take advantage of the impecuniosities attendant in the Nigerian economically disadvantaged groups to engage in transactional politics where voting and bargaining power is exchanged for food, cash and other economic advantages.⁷¹ These strictures are largely responsible for barriers which deny women access to information which serves to propel them to the frontlines of democracy to enable a more gendered contribution to policy interventions which would in turn favour gender mainstreaming.

Illiteracy also enhances the non gendered nuances of Nigerian public policy attitudes to gender roles and gender mainstreaming. The relegated roles of women to the background as a result of inaccessibility of tools for making informed choices regarding inclusiveness a gendered dynamic to policy making. This is also germane when juxtaposed with the fact that formal education gives women opportunities to earn greater income which in turn increases the likelihood of civic participation and creation of gender mainstreaming synergies.⁷²

Religion serves as a barrier to gender mainstreaming given the religiously subservient roles imposed on women under the strictures of religion. Nigeria is a secular State with the three major religions of Islam, Christianity and traditional religious worship. A common feature cutting across all the three major religions is the relegation of women to servile roles with the attendant effect of the transmutation of these religious norms into

⁷⁰ Oke n.24.

⁷¹ K. Fayemi, *The Nigerian Polity, Politics and Politicians: Moving from Transaction to Transformation*, being a Lecture delivered on the occasion of the public presentation of the *Nigerian Political Turf: Polity, Politics and Politicians* by Mobolade Omonijo on Tuesday, August 7 2012 at the Muson Center, Onikan- Lagos available at <https://www.slideshare.net/mobile/EitiState/book-launch-speech-13908102> accessed on 12th March 2022.

⁷² Bolaji (n.69).

societal values. Implicit in the religious restriction of women participation in certain spheres of endeavour is the exclusion of women from participation in governance on grounds of religious beliefs.⁷³ 5.

Conclusion and Recommendations

(i) Conclusion

In its attempt to analyse the statutory, public policy and international soft law mechanisms impinging on gender mainstreaming in Nigeria. This study has examined the CFRN (1999) (as amended) as well as international soft law mechanisms grounding gender mainstreaming. It is apposite to therefore state that the Nigerian constitutional framework makes cursory reference to non discrimination arising from gender but does not directly give effect to the role of women as participants in the frontlines of democracy.

Attempts by the National Gender Policy (2021-2026) to fill the lacuna created by the Nigerian constitutional framework, has proven insufficient to bridge the gap between intention and actualisation of a more gendered approach to public policy delineations affecting gender mainstreaming. This has resulted in paternalistic policies leaving gender mainstreaming to administrative and ministerial discretion.

International soft law mechanisms lack domestic enforcement and implementation musculature outside the provisions of Section 12 of the CFRN and where such mechanisms are directly enforceable within the contextual flavours of the CFRN, claw back clauses impede the *de facto* actualisation of creating an enabling statutory rights based approach to gender mainstreaming.

Socio-economic and religious factors also play significant roles in diminishing the gendered policies in favour of gender mainstreaming. The concomitant effect of the foregoing is the minimal input of women in laws, policies and initiatives affecting their gender and a significant decrease in

⁷³ I. T. Sampson, Religion and the Nigerian State: Situating the *de facto* and *de jure* Frontiers of State Religion Relations and Its Implications for National Security, in *Oxford Journal of Law and Religion* Vol. 3 No.2 (2014) p.311.

female social and economic output which results in the continuous relegation of women to the background as opposed to the forefront of nation building in Nigeria.

(ii) **Recommendations**

For purposes of constitutional imperatives on gender mainstreaming, it is recommended that the CFRN (1999) be amended to reflect the recommendations of the current National Gender Policy 2021- 2026 which encapsulates gender responses and gender mainstreaming.⁷⁴ Flowing from such constitutional reform should be statutory intervention establishing monitoring and implementation mechanisms for the relevant sections of the amended *grund norm*.

The above stated constitutional and statutory interventions will birth cultural and normative reorientation which would in turn defeat actual and perceived biases against a gendered approach to laws, policies and governance. It is further recommended that woman participation in democracy can be catalysed by intensive civic education targeted at defeating bias against gendered participation in democratic processes which would instil the need to have a gender inclusive government. Such civic education should be targeted at the general population with a view to establishing the significant role of gender mainstreaming in the regularising unequal power relationships between genders in Nigeria.

Gender policies affecting women should take cognisance of economic empowerment as one of the drivers of gender mainstreaming and a gendered participatory economy. It is therefore apposite to recommend that economic policies which defeat the feminisation of poverty should be embarked upon with a view to financial empowerment of women to engender effective gendered interventions. These economic interventions would coupled with civic education would serve to defeat transactional public policy interventions which has been the bane of the Nigerian experiences in gender mainstreaming.

⁷⁴ *Ibid*, p. 47.

While it is conceded that policies and statutory interventions of the magnitude contemplated by this study cannot be birthed with immediacy, it is apposite that strategic and concerted interventions will create an enabling foundation for gender mainstreaming in Nigeria.