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Police Act And Police Women: Is Nigeria Police Force An Agent of Protection or Violation of Human Rights?

Akinbola Bukola Ruth*

Abstract

The police are the specialist carriers of state power and have enormous powers. The police have the monopoly of legitimate use of force. The primary duties of the Nigeria police include the prevention and detection of crime, apprehension of offenders, preservation of law and order, protection of life and property and enforcement of all law. Although police should ordinarily be considered an attractive career, the Nigeria women police face the challenge of inequality with their male counterparts, as a result of some provisions of the Police Act and its regulations, which limit women from the point of eligibility to join the force, right through other privileges of being a police.

This article broadly examines the police and the Act that establishes it, in the context of constitutional guarantee of equality and non-discrimination in sections 17 and 42 of the Constitution of the Federal Republic of Nigeria 1999 and found that there are provisions within the Police Act that are inconsistent with the constitution in the light of section 1(1)-(3) and are void to the extent of their inconsistency. The paper found that gender inequality, amounting to discrimination against women police, is part of the challenges within the police force. It concluded that irrespective of who is the victim of discrimination, it is an unconstitutional act.

The paper recommends that all provisions that are discriminatory against women in the Act should be repealed and

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more women police should be employed in view of the special attributes of women to engender peace and security in Nigeria.

1. Introduction

Although there are three major organs of government¹, they are not enough to do all that a government must do in order to discharge its constitutional duties. Agencies are established by the government as authorized by the constitution, as a necessary practice to help the government in the discharge of its functions. There are different types of Agencies and they can be classified based on their functions. For instance, there are agencies or parastatals that help government in the provision of social amenities² For the administration of state security and justice for example, there are the Nigerian Navy, Nigerian Immigration and the Nigeria Police Force which enforces the law, to mention a few. By virtue of their status as government bodies, government agencies assume responsibilities and privileges that place them in an exalted position in relation to other corporate entities. One of the most important agencies of government in Nigeria is the Police Force and that is because it deals directly with the administration of justice (fairness) and it was established by the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), along with other major federal government bodies³. It has been posited that the police are the specialist

¹ Section 4 provides for Legislative powers; section 5 provides for Executive powers and section 6 provides for judicial powers in the CFRN 1999 (as amended).

² Such as Water Corporations and Housing Corporations of different states in Nigeria.

³ B – Establishment of certain Federal Executive Bodies section 153. (1) provides that “There shall be established for the Federation the following bodies, namely:

- (a) Code of Conduct Bureau;
- (b) Council of State;
- (c) Federal Character Commission;
- (d) Federal Civil Service Commission;
- (e) Federal Judicial Service Commission;
- (f) Independent National Electoral Commission;
- (g) National Defence Council;
- (h) National Economic Council;
- (i) National Judicial Council;
- (j) National Population Commission;
- (k) National Security Council;
- (l) Nigeria Police Council;
- (m) Police Service Commission; and

carriers of the state's bedrock power⁴. Suleiman affirmed this view by positing that: 'the distinctiveness of the police lies in their being the specialist repositories for the state's monopolisation of legitimate force'⁵. Unfortunately, these powers exercised by the Police Force, are subject to abuse, like others⁶. The abuse of power by the police force can be expressed towards nonmembers of the force as well as members of the force for varied reasons, including gender discrimination. Obaro has expressed the view that even though the Police is generally considered an attractive career, the Nigeria Police Force is fraught with endemic problems with recruiting, training, inefficiency, indiscipline, and lacking expertise in specialized fields.⁷ Gender inequality, amounting to discrimination⁸, is part of the challenges within the Police Force. Irrespective of who is the victim of discrimination, it is an unconstitutional act.⁹ As noted by the Supreme Court of Nigeria, all agencies of government are organs of initiative whose powers are derived from the constitution and they must exercise their authority within the ambit of the constitution¹⁰. Gender-based discrimination is not peculiar to Nigeria or the Police force alone¹¹. There have been attempts to introduce the doctrine of

(n) Revenue Mobilisation Allocation and Fiscal Commission.

(2) The composition and powers of each body established by subsection (1) of this section are as contained in Part I of the Third Schedule to this Constitution."

⁴ Etannib E. Alemika, *Police, Policing and Rule of Law in Lone Lindholt, Paulo de Mesquita Neto, Danny Titus and Etannib E. Alemika (Eds.) Human Rights and the Police in Transnational Countries*, (cited Reiner, 1993), Kluwer Law International incorporates the imprint of Martins Nijhoff 2003, p. 80.

⁵ Suleiman, A. (1996), "Nigeria Police and Crime Prevention", in A. B. Dambazau, M. M. Jumare and A.M. Yakubu, eds.), *Issues in Crime Prevention and Control in Nigeria*. Kaduna: Barala Press, 1996, ch. 9.

⁶ For instance, in the case of *Osho V. Foreign Corporation*, the court lamented the abuse of power by the agencies of government.

⁷ Ogaga Ayemo Obaro. *The Nigeria Police Force and the Crisis of Legitimacy: Re-Defining the Structure and Function of the Nigeria Police*, *European Scientific Journal* March 2014 edition vol.10, March 2014. No.8 (ISSN: 1857 - 7881 (Print) e - ISSN 1857- 7431), pp. 421-436, 423

⁸ Section 42 (1)-(2) CFRN.

⁹ Section 1 (1) - (3) of the CFRN 1999.

¹⁰ *Lafia L.G. v. Executive Governor Nasarawa State* (2015) Vol. 13 Weekly Reports of Nigeria (WRN) pp.1-55 at 31-32.

¹¹ In 1974: In an important case for the rights of pregnant women, the Court struck down a mandatory maternity leave policy for public school employees as violating the Due Process guarantees of the Fifth and

separate but equal. However, even then, the US Supreme Court held that it was not sustainable as there were inherent discrimination in allowing such.¹² There were instances in USA, where such cases have come before the Courts, including *Phillips v. Martin Marietta Corp.* (1971): Title VII prohibits discrimination by employers on the basis of race, color, religion, sex or national origin. Supreme Court case *Phillips v. Martin Marietta Corp.* marked the first sex discrimination case under Title VII. The Court unanimously ruled that employers could not refuse to hire women with pre-school aged children while hiring men with children of the same age.¹³

This article critically examines gender based discrimination in contradiction with the provisions of the CFRN 1999. It has six parts beginning with this introduction. The second section is an overview of, and the importance of the police in Nigeria as a body polity while the third section examines the concept of discrimination and its application to women police in the Nigeria Police Force. The fourth part is on the importance of a gender inclusive police force and the concept discrimination generally and against women in the police in particular and the fifth part considers the laws that protect women against discrimination and the sixth section highlights how the judiciary has advanced the protection of women's rights through case law. Last part is the conclusion and recommendations.

Fourteenth Amendments, in *Cleveland Bd. of Ed. v. LaFleur*. Also in 1973 in a case that is important for the protection of women's rights, the Supreme Court struck down in *Frontiero v. Richardson* a law that classified benefits on the basis of gender, though could not agree on whether a strict scrutiny standard or a rational basis standard should apply. In respect of pregnant women, in 2015: Employers accommodating nonpregnant workers with injuries or disabilities, but not pregnant workers who need accommodations, may be placing a significant burden on pregnant workers in violation of the Pregnancy Discrimination Act, the Court ruled in *Young v. UPS*.

¹² In *Brown v. Board of Education*, (1954) Chief Justice Earl Warren, reading his first major opinion from the bench, said: "We conclude, unanimously, that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

¹³ Retrieved on 29 March 2017 from <http://www.criminaljusticedegreesguide.com/features/10-landmark-court-cases-in-womens-rights.html>

2. Overview and Importance of the Police Force in Nigeria

For the purpose of maintaining law and order and protection of public security, the police is a very important organ of any civilized society. The word Police is derived from the Greek word "POLIS" meaning that part of non-eclesiastical administration having to do with safety, health and order of the state. Greek policing, meant the act of governing and regulating the welfare, security needs and order of the city-state in the interest of the public.¹⁴

In terms of its history, the origin of the Nigeria Police Force dates back to 1861, when the Force was regarded as Hausa Constabulary, and its primary duty was to protect the trade interest of the Royal Company along the River Niger in the North. Subsequently, it transformed from the special constabulary into the Nigeria Police Force. According to Odekunle, the history of the Police in Nigeria is that it came about as a British colonial creation, and through colonialism and domination, on the one hand, and on the other hand, by neo-colonialism and diffusion, Nigeria's social, economic and political processes and institutions were reorganised and integrated into the world capitalist system¹⁵. He further stated that it is against the background of this historical reality that the state of the role and functions of the Nigeria Police can be better appreciated.¹⁶ Ogaga similarly posits that this historical information will also deal with the police crisis of legitimacy in Nigeria, stating that it is generally believed that what is presently known as the Nigeria Police Force "is the brainchild of British colonial government and dates back to 1861, following

¹⁴ The role of law enforcement agencies in the promotion and sustainability of participatory democracy and rule of law. A speech delivered by Mr. Sunday Ehindero (Former IGP) ably represented by commissioner of police., Bukar Maina, Commissioner of Police, Kwara State command on Wednesday 13th December, 2006.

¹⁵ Odekunle, O., "Capitalist Economy and the Crime Problem in Nigeria". *Contemporary Crisis*, (1978) pp. 86-94.

Odekunle, O., "The Nigeria Police Force: A Preliminary Assessment of Functional Performance", *International Journal of Law*, (1979). No 7, pp. 61-83, in Ogaga Ayemo Obaro, 2014. op.cit. (note 8) p.425

Odekunle, O., "Criminological Knowledge and Nigeria's Crime Problem: The Dilemma of Social Scientists in Nigeria" in A.O Sanda (ed); *Social Science and Social Policy in Nigeria*, Ibadan: NISER, 1981, pp. 185-202.

¹⁶ Ibid.

the annexation of Lagos”¹⁷. Presently, the Nigeria Police Force was established as a government body under the constitution¹⁸ as follows:

There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

(2) Subject to the provisions of this Constitution -

- (a) the Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an act of the National Assembly;
- (b) the members of the Nigeria Police shall have such powers and duties as maybe conferred upon them by law;
- (c) the National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields.

As regards its functions, Police is the department of government that concerns itself with the maintenance of public order and safety and the enforcement of law or the civil force which is entrusted with the duty of maintaining public order, enforcing regulations for the prevention and punishment of breaches of law and detection of crime.¹⁹ Police also refers to the state’s civil force which is responsible for the maintenance of public order, or individuals given the general right to use coercive force by the state within the state’s domestic territory.²⁰ Bittner has expressed

¹⁷ Tamuno, T.N. *The Police in Modern Nigeria (1861-1965): Origins, Development and the Role*, Ibadan: University Press, in Ogaga Ayemo Obaro, March 2014. *The Nigeria Police Force and the Crisis of Legitimacy: Re-Defining the Structure and Function of the Nigeria Police. European Scientific Journal*, vol.10, No.8 (1970), ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431, 421

¹⁸ Section 214 (1) of the 1999 Constitution (CFRN) (As amended).

¹⁹ *The Oxford English Dictionary*

²⁰ Curzon L.B. and Richards P.H. 2007. *The Longman Dictionary of Law*, 7th ed.p.443.

the view that Police work involves a variety of tasks and responsibilities and duties of Officers include prevention of crime, protection of life and property, enforcement of the laws, maintaining peace and public order, and providing a wide range of services to citizens, stating that a common trend unifying these diverse activities, however, is that potential for violence and the need and right to use coercive means in order to establish social control²¹. These functions of the Nigeria Police are also statutorily spelt out²². The primary duties of the Nigeria Police, to include:

- i. Prevention and detection of crime
- ii. The Apprehension of offenders
- iii. Preservation of law and order
- iv. Protection of life and property
- v. The enforcement of all law
- vi. Regulation within which they are directly charged
- vii. Military duties within and outside Nigeria, as may be required by the Law.

Broadly, modern police forces are assigned the primary duty of law enforcement and order maintenance. But the content of law and what constitute order vary widely across time and nations, and are determined by the political economy of societies. The concrete roles played by the police are defined by law and conception of order in accordance with the political and economic interests of the dominant or ruling groups in society. Robert Reiner stresses this point²³: The significance of the Nigeria Police Force is almost getting lost in the shadow of the problems of public security which have been said to perhaps be the biggest challenges to Nigeria's consolidating democracy. In the view of Olly, since 1999, the Nigeria Police Force has been central to managing and responding to challenges²⁴. Without an effective police force, the wider state, society and economy will find it difficult to function effectively and maximally. Challenges to policing Nigeria have been identified to include rapid

²¹ Bittner, E *The Function of the Police in Modern Society*, Chevy Chase: National Institute of Mental Health, cited in Ogaga Ayemo Obaro, (1970).

²² Section 4 of Police Act cap 359 Laws of the Federation 1990, now 2004.

²³ Robert Reiner, 1993, in Ogaga Ayemo Obaro, *op.cit.*.

²⁴ Olly Owen. *The Nigeria Police Force: Predicaments and Possibilities*, *NRN WORKING PAPER NO.15* Nigeria Research Network (NRN), Oxford Department of International Development, Queen Elizabeth House, University of Oxford, July, 2014, p. 6..

urbanisation, population growth, rising inequality, unemployment, mass migration, breakdown of older systems of social order, neighbouring weak states, and the opening of new economic arenas, which give rise to a huge range of criminal challenges including robbery, kidnap, corruption, fraud, terrorism, sexual assault, domestic violence, communal strife, and criminality in politics²⁵. Although specialised bodies exist to deal with some of these, the primary agency in the frontline of these challenges is the Nigeria Police Force. The Nigeria Police Force is also globally important in scale because it is both one of the world's largest employers, and a major presence in Nigerian society.²⁶ The number of members of the force is so large that it is more than the population of some of Nigeria's constituent states.²⁷ Understanding that the police act as the representatives of the coercive potential of the state and the legitimate users of force helps explain a number of their attitudes and characteristics²⁸.

3. Human rights protection and the concept of discrimination

Under the heading, protecting human rights, the USAID, has described human rights protection and promotion, stating that protection of rights comprises of actions or programming aimed at preventing or avoiding rights violations by the state²⁹, while promotion of rights comprises of "actions or programming aimed at advancing rights, empowering communities and rights advocates, and advancing awareness". Human rights promotion is achieved through legislation and regulations aimed at preserving human rights in national law; education and awareness based on human rights, especially among particularly vulnerable or marginalized populations; transitional justice or support for the different ways in which societies come to terms with a legacy of past human-rights violations and/or war crimes. Human rights protection on its part according to USAID,

²⁵ Ibid.

²⁶ If the force's approximately 377,000 officers are each assumed to have an average of four dependents, this would mean 1.88 million Nigerians belong to police families according to Olly.

²⁷ Olly, *op.cit.*, pp.6-7.

²⁸ Reiner, 1993, *Ibid.*

²⁹ USAID, Protecting human rights, retrieved on 05 May 2017 from <https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/protecting-human-rights>

includes activities like the protection of human rights defenders; increasing the capacity of vulnerable populations to defend their rights and advocate for themselves³⁰; atrocity prevention which is aimed at preventing attacks on vulnerable or marginalized populations and efforts to stop human trafficking and protect its victims³¹.

In terms of discrimination, much as there is hardly any legal concept that has been defined with finality, this concept of has been variously and similarly defined by many sources. Although discrimination has been variously defined, this article will look at its some definitions as contained in notable human rights instruments beginning with the Universal Declaration of Human Rights (UDHR), which though not a binding instrument, has assumed the status of a customary international law and laid the foundation of international human rights. From its provisions, one may deduce what discrimination means. The UDHR states that "*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*"³². It provides further that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"³³.

Some subsequent binding human right instruments give outright definitions. For instance, the International Convention on Racial Discrimination has defined discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental

³⁰ This includes victims of torture or war trauma, people with disabilities, indigenous or tribal peoples, LGBT individuals, labor activists, detainees, women and children.

³¹ USAID, *Protecting human rights*, retrieved on 05 May 2017 from <https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/protecting-human-rights>

³² Article I of the Universal Declaration of Human Rights (UDHR), 1948.

³³ Article 2 of the UDHR, 1948.

freedoms in the political, economic, social, cultural or any other field of public life.³⁴

Most relevant to this article, is the definition of discrimination as contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), since the article is on rights of women in the Nigeria Police. CEDAW defines discrimination as follows:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field³⁵.

The UNICEF has noted the similarity between prejudice and discrimination and made a distinction between them. Prejudice, which is made up of unfavourable or discriminatory attitudes (not actions) towards persons of different categories, is a different concept³⁶, further noting that racial, sexual and other types of discrimination can exist at the level of personal relations and individual behaviour as well as be institutionalised as legal or administrative policy³⁷. It expressed the view that the term discrimination refers to contemporary industrial societies which are marked by a 'generalized ideology of equality of opportunities and rights', but which disregard certain classes of people, at times small minorities but often large and important ones or even majorities like women³⁸.

Discrimination has to do with the assortment for unfavourable treatment, of an individual(s), based on: gender, race, colour or

³⁴ United Nations. The International Convention on the Elimination of All Forms of Racial Discrimination, Article 1

³⁵ Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979.

³⁶ United Nations Educational and Scientific Organisation (UNESCO) Retrieved on 30 March 2017 at 2.14 pm from: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/discrimination/>

³⁷ UNESCO, *Ibid.*

³⁸ UNESCO, *Ibid.*

ethnic or national origin, religion, disability, sexual orientation, social class, age, subject to the usual conventions on retirement, marital status or family responsibilities, or as a result of any conditions or requirements that do not accord with the principles of fairness and natural justice³⁹. It has been rightly found that it can take diverse forms and may include direct discrimination, (including for instance, refusing to admit as students, employ or promote individuals because they are black, female, disabled or because of their sexual orientation); or indirect discrimination, (for example, setting age qualifications which discriminate against women who have had periods away from work because of family responsibilities).

4. Importance of a gender inclusive Police Force and discrimination against women

Can the police force not exist without women? Why is it necessary to include women in security matters and in the police force in particular? These questions are relevant in Nigeria in the wake of a global realization and advocacy that women are grossly under-represented in peace keeping and state security, especially as professionals. The UN Security Council has drawn attention to the promotion of gender equality as part of a comprehensive approach to conflict prevention and sustainable peace, noting that an inclusive police service that is representative of the population, will aid the restoration of trust and confidence in the police, especially from women and children, as the police institution is reformed, restructured and rebuilt⁴⁰.

The UN acknowledges the uniqueness of female police officers to be role models for gender equality, inspire women and girls to claim their own rights and pursue careers in law enforcement. Additionally, women and children gain greater sense of security from female police officers and local women receive improved access and support from law enforcement agencies. Women police also help the United Nations to tackle and respond to sexual exploitation and abuse⁴¹. In keeping with its recognition

³⁹ UNESCO, *Ibid.*

⁴⁰ UN Security Council resolution 2185 on policing in peacekeeping 2014.

⁴¹ Gender Initiatives Increasing the number of female police officers. Retrieved on 10 May, 2017 from: <http://www.un.org/en/peacekeeping/sites/police/initiatives/globaleffort.shtml>

of the importance of the role of police women the United Nations in 2009, launched an effort to increase the number of female police officers deployed with the United Nations⁴².

The United Nations safeguards gender-sensitive policing all through the work of United Nations Police as a necessary part of its operations to address the segregated safety needs of males, females and children⁴³. The UN considers the involvement of female police officers as a critical input for the full range of United Nations Police activities, which comprise the promotion of rule of law, intelligence, planning, leadership, investigations, public order management, capacity-building of host-State police, community-oriented policing, gender awareness raising and engaging communities⁴⁴. The UN Security Council reviewing the progress on the implementation of its landmark resolution which hinged on women, peace and security for instance, emphasised the importance of promoting and protecting the human rights of women and girls, as well as increasing women's participation in conflict prevention, resolution and peace building⁴⁵. The United Nations has sought and is still seeking to increase the number of women police officers as a top priority. It is the intention of the UN Police to increase the number of female police officers in peacekeeping operations and encourage the recruitment of women in domestic police services.⁴⁶ As at 2006, there were only nine percent of UN Police Officers that were female, and although there has been an increase from six percent before 2006, but there was still an obvious imbalance. In

⁴² *Ibid.* As a result, the number of female officers increased from about 900 (seven percent of 12,000 police) to 1,300 officers (ten percent of 13,000) in 2016. Yet, more needs to be done. The goal was reaffirmed through Security Council Resolution 2242 (2015), which mandates the United Nations to double its female police representation by 2020.

⁴³ Gender Initiatives Increasing the number of female police officers. Retrieved on 10 May, 2017 from: <http://www.un.org/en/peacekeeping/sites/police/initiatives/globaleffort.shtm>

⁴⁴ *Ibid.*

⁴⁵ Resolution 1325 of year 2000 on Women and Peace and Security.

⁴⁶ The United Nations Police Division seeks highly qualified police officers from United Nations Member States for service in UN peace missions around the world. 'More Female Police Officers'. Retrieved on 29 March 2017 from <http://www.un.org/en/peacekeeping/sites/police/recruitment.shtml>

August 2009, the UN launched a world-wide drive to recruit more women into its ranks⁴⁷.

Summarising the themes of the conference, the North Atlantic Treaty Organisation (NATO) (also called the North Atlantic Alliance),⁴⁸ Secretary-General Anders Fogh Rasmussen stated:

Women are not just victims of conflict. They must also be part of the solution. If women are not active participants in peace building and reconciliation, the views, needs, and interests of half of the population in a conflict area are not properly represented. That is simply wrong. It can also undermine the peace. . . . Resolution 1325 is a landmark resolution because it not only recognizes the impact of conflict on women, it also recognizes the important role that women can play and indeed must play in preventing and resolving conflict and in building peace.⁴⁹

The concern of the UN over the low representation of women in peace keeping and security⁵⁰ has been aptly expressed by the United Nations Secretary-General Ban Ki-moon said that:⁵¹

involving women in conflict prevention and mediation was essential for building peace and reinforcing the foundations of democracy. Women's participation in both official and observer roles remained low, however, he noted, saying, "This has

⁴⁷ 'More Female Police Officers' Retrieved on 29 March 2017 from <http://www.un.org/en/peacekeeping/sites/police/recruitment.shtml>

⁴⁸ North Atlantic Alliance, is an intergovernmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949. NATO had 12 Founding members in 1949, namely Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States, but as at 2016, has increased to 28 members. Its primary purpose was to unify and strengthen the Western Allies' military response to a possible invasion of Western Europe by the Soviet Union and its Warsaw Pact allies.

⁴⁹ Valerie Norville. January 2011. The Role of Women in Global Security. Special Report. United States Institute of Peace. www.usip.org

⁵⁰ Security Council Stresses Importance of Increasing Role of Women in Conflict Prevention, Resolution, Mediation; Peace building, retrieved on from <http://www.un.org/press/en/2011/sc10426.doc.htm>

⁵¹ At the opening of the day-long meeting, which featured nearly 60 Government interventions.

to change, and I am determined that the United Nations system should lead by example”.

In keeping with global trends as exemplified by the UN, Nigeria also needs to revisit its gender inclusiveness in its police force. The law in Nigeria, beginning with the Constitution of the Federal Republic of Nigeria (CFRN) 1999, particularly in chapter IV, provides for the equality of all citizens in several sections, including: “*That every citizen shall have the equality of right, obligations, and opportunity before the law; and that no Nigerian citizen shall be discriminated against because of a particular sex, religion or ethnic group*”⁵². This provision, as good as it is, however forms part of the Fundamental Objectives and Directive Principles of State policy, which are ordinarily supposed to guide the state in directing its activities and resources for the development of the state and have been tagged “non-justiciable”.

Generally, as observed by Ekhaton, there has been an upsurge in cases of discrimination against women in Nigeria⁵³. Discrimination against women can occur in almost any facet of life. On a general note, discrimination against women covers several issues, including the civil status of women, their capacity to enter a contract of marriage of their own choice, women’s legal capacity to own and administer property, right to inherit property, a woman’s right to retain or change her nationality, and the rights and responsibilities with regard to their children. It is submitted that discrimination in all of these areas have the potential to challenge, compromise and hamper the promotion and protection of the rights of women whether they be married, widows or single. Some traditional practices in Nigeria, discriminate against women and girls in inheritance by not allowing women and girls to inherit from their husbands or fathers or by preventing women and girls from inheriting equal shares or on an equal basis with males. Some traditions also do not allow females to execute wills, or they limit the inheritance

⁵² Section 17(1) (2) CFRN 1999.

⁵³ Eghosa Osa Ekhaton, 2015. Women and the Law in Nigeria: A Reappraisal, *Journal of International Women’s Studies* Vol. 16, No. 2, p. 292.

rights of female heirs to only limited or controlled rights or only income from the deceased's property⁵⁴.

Judicial interventions however, is bringing some reform to such discriminatory customary practices. For instance, in the Attorney General of the Republic of Botswana v. Unity Dow⁵⁵, the plaintiff Unity Dow, a female citizen of Botswana, successfully challenged the legitimacy of Botswana's Citizenship Act on the constitutional ground that the Act unlawfully discriminated against her on the basis of her gender. Under Botswana's Citizenship law, citizenship was denied to the children of a female citizen married to a foreigner. The court of original jurisdiction found, and the appellate court upheld, that the Citizenship Act in this respect unconstitutionally discriminated against women. To make its finding, the court rejected the argument that the absence of gender or sex as protected classes in the Botswana Constitution was an intentional reflection of the patriarchal nature of the society. In reasoning to conclusion on this point, the lower court cited variety of cases from other jurisdictions, including the United States Supreme Court case South Dakota v. North Carolina⁵⁶, in which Justice White wrote that all of a Constitution's provisions "*bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument.*"

5. Discriminatory provisions affecting women in the Nigeria Police Act

On the hierarchy of laws in Nigeria, supremacy and superiority of the constitution over Acts of the National Assembly is not in dispute as the constitution is at the apex of the hierarchy of all laws in the country. The general provision of the Constitution in part stipulates in section 1(1) that: '*This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria*'. In the event of a conflict between a provision of the constitution and any other law in Nigeria, the constitution provides in section 1(3) as follows: '*If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void*'. The constitution is therefore supreme over all others, including those

⁵⁴ *Mojekwu v Mojekwu* [1997] 7 N.W.L.R 283 (Nigeria, Court of Appeal)

⁵⁵ 103. I.L.R. 128 (Bots. Ct. App. 1992).

⁵⁶ 12 U.S. 268 (1940).

made by the legislature, even though the legislature has the power to amend the constitution. In view of the clear hierarchy of laws in Nigeria, it would have been ideal for the various law reforms in the country to have expunged from the various legislations, all enactments that are inconsistent with the provisions of the constitution (including the inconsistent sections of the Police Act and regulations), rather than wait for the courts to declare such inconsistent laws null and void to the extent of their inconsistency. Nonetheless, the judiciary as the last hope of the common man has bridged the gap as selected decided cases show in this article.

The Supreme Court reiterated the role of the court in *Lafia L.G. v. Nasarawa State Governor*, stating that the courts are the upholders of the supreme law and the fundamental laws of the land and therefore jealously guard the supremacy of the constitution and its interpretation. The courts have appreciated the constitution as the *grundnorm* while other legislations take their hierarchy from the provisions of the constitution. The provisions of the constitution take precedence over any law enacted by the national Assembly even though the National Assembly has the power to amend the Constitutions itself⁵⁷

Discrimination is not only found in policies like that of the Nasarawa State Governor as seen above, but is also identifiable in some statutory enactments in Nigeria to date. Although the constitution provides for equality of men and women, there are varied statutory provisions that directly or indirectly violate the constitutional guarantee of the equality of men and women in Nigeria. The Police Act and the regulations made under it, is a typical example and will be examined more closely. In the Police Act, discriminatory provisions span from pre-employment to the actual employment criteria and process, the schedule of work, right through to the benefits and privileges of the job. Some of the discriminatory provisions are briefly examined seriatim here beginning with the language of the Police Act. The language of the Act is generally not gender sensitive, frequently using the masculine pronoun to describe a police officer, as if all police officers were male persons. For instance, in providing for the

⁵⁷ Per Adekeye, JSC in *Lafia Local Government v. Governor of Nasarawa State* [2012] 17 NWLR (Pt. 1328) at 48-49, lines 10-20.

conduct of prosecution by a police officer, it uses the word, "his", when it provides thus:

Subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney-General of the Federation and of a State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria), any police officer may conduct in person all prosecutions before any court, whether or not the information or *complaint is laid in his name*⁵⁸.

In respect of women, from the point of enlistment into the force, the Police Act requires that the marital status of a woman applicant to become a police, must be unmarried⁵⁹. Ironically, the Act does not make the same demand from a male applicant before such can be enlisted. The implication of the requirement not to be married, is that a woman applicant to become a police, is subject to a different or extra demand. Most importantly, it is a clearly an unequal yardstick for the employment of women police and a violation of section 42 of the CFRN 1999 (as amended).

Upon the successful enlistment of a woman into the Nigeria police force subject to her unmarried status, if and when a woman police intends to get married, the Police Act also forbids a woman police officer from marrying a man of her choice, unless she obtains the permission of the Commissioner of Police in the command where she is serving. The Regulation states that:

A woman police officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Command in which she is serving, requesting permission to marry and giving name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the

⁵⁸ Section 23 of the Police Act Part IV, 1968. LFN 2004 and the Regulation thereto, providing for the conduct of prosecutions before the courts of law under the Powers of police officers. See [Cap. C23.] Emphasis supplied.

⁵⁹ Section 118 (g) of the Police Act LFN 2004 and the Regulation thereto.

woman police officer has served in the force for a period of not less than three years.⁶⁰

The procedure for the interview of women candidates for enlistment in the force requires that in every case, a woman be interviewed by the interviewing officer in the presence of a suitable female person, who shall be, in every case where this is practicable, a woman police officer.⁶¹ On the surface, this provision looks like a protective measure to avoid problems like sexual harassment. However, since the same does not apply to the men applicants, it is discriminatory⁶² to interview a woman in the presence of a female senior officer which may even intimidate the candidate. The provision also presumes that the interview panel will be composed of male police officers and not women police. It is submitted that there can arise, situations where a male applicant to the force, appears before all women police officers only interview panel. Were that kind of situation to arise, there is no requirement for such a panel to have a male police officer for the protection of such a male applicant.

Generally, the duties of the police is provided for in section 4 of the police Act⁶³, while Police women's scope of responsibilities are however specifically provided for as though they were separate and different from the other police officers. Under the caption, *general duties of women police officers*, the Police Act

⁶⁰ Regulation 124 of the Police Act 1968 and the Regulation thereto. Now LFN 2004.

⁶¹ Section 120 (1) of the Regulation under the Police Act 1968, Part V, Cap P19 on Interviewing of women candidates for enlistment.

⁶² The inequality subtly embedded in this section is deducible from s. 120 (4) that requires that Interviewing officers shall bring to the attention of women candidates for enlistment into the Force, the provisions of the Regulations governing the duties of women police, and the miscellaneous conditions of service attaching to women police. One wonders why women have to be singled out for special duties, which they are to be informed of at their interview and no such special duties attach to the men applicants to the force.

⁶³ Section 4 of the Police Act sets out the General duties of the police as follows:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act. [1979 No. 23].

spells out the schedule of work for police women when they join the force, in the following terms⁶⁴:

Women police officers shall as a general rule be employed on duties which are connected with women and children, and shall be particularly employed in the following duties-

- (a) investigation of sexual offences against women and children;
- (b) recording of statements from female witnesses and female accused persons and from children;
- (c) attendance when women or children are being interviewed by male police officers;
- (d) the searching, escorting and guarding of women prisoners in police stations, and the escorting of women prisoners to or from police stations;
- (e) school crossing duties;
- (f) crowd control, where women and children are present in any numbers.

The roles that are assigned to police women by the Act, are women and children related but there is no restriction on male police officers in terms of gendered scope of work as they can police the society at large. In the possible event that a police woman is at the scene of a crime by male offenders and she feels capable of handling the situation, should she go ahead to do so or would it be outside her scope of authority, based on section 121 (a)? If such a police woman takes the challenge to engage male criminals in her capacity as a police, and by any means suffers injury in the process, would it be a case of overstepping her boundaries and therefore being subject to penalty under the Act or would the police force commend her and take responsibility for her care? This specification of scope of duty/authority is only justified for the purpose of searching a person of the same sex, for obvious reasons. Otherwise, it is clearly discriminatory and treats police women as inferior to their male counterparts, to limit them in the scope of duty, for being police women. It gives them a narrower scope of power, limiting them to women and children and by necessary implication, excluding women police from exercising power over the male members of society, except

⁶⁴ Section 121 (a)-(f) of the Regulation under the Police Act 1968, Part V, Cap P19 on titled: General duties of women police officers

for the purpose of school crossing and crowd control⁶⁵. It is submitted that even if the other duties spelt out in section 121 are gender sensitive, recording of statements from witnesses and accused persons who are females only, is not justified and is clearly a human rights discrimination that violates sections 41 and 42 of the Constitution of the Federation of Nigeria.

Even the constitutional guarantee of the right against discrimination provided in section 42 CFRN has been criticized as not providing full protection. Ashiru has argued that section 42 (3) of the Nigerian Constitution, for instance, indirectly promotes discrimination against women in Nigeria⁶⁶. This subsection of the Constitution is said to “preclude one from challenging laws which are discriminatory with respect to any office under the State, in the armed forces, the Nigerian Force or a body corporate established directly by any law in force in Nigeria”⁶⁷, Eghosa however disagrees with the view of Ashiru on section 42 (3) of the constitution, claiming that such a view is wrong and represents the traditional view held by academics and lawyers in Nigeria⁶⁸. It has been said that the ACHPR, other sections of the Constitution such as section 17(1)(2), section 42 (1)(2) and other international treaties or conventions which Nigeria has signed and ratified have been said to serve as supports in quashing some of these state-sanctioned discriminatory practices in Nigeria⁶⁹. While both Ashiru and Eghosa have some elements of truth in their views, it is submitted that neither of the two is absolutely right or wrong. It is right to hold the view that other legislations have aided to mitigate the hardships caused by laws that promote state-aided discrimination against women, but at the same time, it is desirable that there should be law reform to eliminate or update such laws to a status that make them conform with internationally accepted standards of democratic societies.

⁶⁵ Section 121 (e) and (f) of the Regulation under the Police Act 1968, Part V, Cap P19

⁶⁶ Ashiru, M.O.A. A Consideration of Nigeria Laws which are Gender Insensitive: the Female Gender in Focus. *University of Benin Journal of Private and Property Law*, (2010) 1 (1), 90-110.

⁶⁷ Ashiru, M.O.A. (2010), *ibid*.

⁶⁸ Eghosa Osa Ekhatior. Women and the Law in Nigeria: A Reappraisal, *Journal of International Women's Studies* Vol. 16, No. 2, (2015) p. 292.

⁶⁹ Eghosa Osa Ekhatior, (2015), *ibid*.

Where women police officers are recruited into the general duties branch of the force, the Act states that the purpose is *in order to relieve male police officers from these duties*, and even then, the capacity of such women police is specifically limited to office duties, namely, clerical duties; telephone duties; and office orderly duties only.⁷⁰ The Act not only discloses that the reason for employing women in the general duties section of the police is “to relieve the men”, but particularly spells out the limit to which women can function there. The wordings of the section makes it clear that the general duties are the exclusive reserve of male police, but circumstances can occasion the use of women to *relieve* the men. It is submitted that women are capable of doing most (if not all the other duties) of the police in the general section. For instance, if women drive private vehicles lawfully, why then can they not be official police drivers? There is nothing except discrimination, to debar women police from driving vehicles as their official job. The Police Act and practice however, do not permit women to take up driving jobs in the force.

Another area of discrimination is that of exclusion of a woman police officer from being called upon to drill under arms or to take part in any baton or riot exercise.⁷¹ While the general non-violent nature of women is acknowledged, it is submitted that there is an erroneous presumption of the inability of a woman to handle arms or undergo the rigors of baton or riot exercises by the Police Act. Such a presumption may not be right or applicable to all police women in a uniform manner. It would have been more equitable to make women police drill under arms in a limited measure, taking account of the limit of the strength of individuals. Alternatively, the Act should leave the provision open to allow those women police who feel capable and interested, to participate in such activities to fully explore their career prospects and possibly enhance themselves. Such a limitation is not placed on the male police by the Act.

It appears as if the police Act is approbating and abrogating at the same time, by excluding women from handling arms in section 122 (presumably on the ground of femininity), but it

⁷⁰ Section 122 (a)-(c) of the Regulation under the Police Act 1968, Part V, Cap P19 which provides for *Employment of women police in offices*.

⁷¹ Section 123 of the Regulation under the Police Act 1968, Part V, Cap P19 which provides for women police not to drill under arms.

withholds at the same time, giving a married woman police officer any special privileges by reason of the fact that she is married, and even further provides that she shall be subject to posting and transfer as if she were unmarried.⁷² Ironically, the same Act compels the woman to be unmarried to qualify for enlistment, not to get married until after three years from the time of her enlistment, to be discharged if she became pregnant without being married. The Act frowns seriously at a police woman being pregnant without being first married in the following terms: *An unmarried woman police officer who becomes pregnant shall be discharged from the Force, and shall not be re-enlisted except with the approval of the Inspector-General*⁷³. It however, grants maternity leave to those who are married according to its requirements⁷⁴. The Act allows a married pregnant police woman to enjoy the benefit of maternity leave while at the same time, it punishes an unmarried pregnant police woman by discharging her from the force for being pregnant without being married. The experience of pregnancy has no regard for marital status of a woman even though it varies from one individual to another. The common needs of pregnant women, including food, medical care and maternity leave, are regardless of being single or married. While the religious and cultural African social values condemn with disdain and view the act of getting pregnant outside matrimony as a wrong or an offence (equating it to being morally loose), it must be noted that law differs from morals. The police Act being a law and not just a moral code, in legislating to deny maternity leave to a pregnant single police woman and even subjecting her to sanction (discharge), clearly discriminates against the single police woman and violates her right to work, especially if pregnancy does not in any way hamper the discharge of her work in a way that differs from, or is over and above a pregnant married police woman.

⁷² Section 125 of the Regulation under the Police Act 1968, Part V Cap P19 which provides that there shall be no special privileges to be granted to married women police.

⁷³ Section 127 of the Regulation under the Police Act 1968, providing for Pregnancy of unmarried women police.

⁷⁴ Section 126 of the Police Act allows a married woman police officer who is pregnant to be granted maternity leave in accordance with the provisions of general orders.

An additional dimension to the discriminatory posture of the Police Act, is its provision on marriage requirement and deterrence of pregnancy for a single police woman, is that in the event that a police woman has to wait for three years after enlisting in the police force, and then wait for another three years before she is allowed to get pregnant (even as a married woman), is that her reproductive rights to have the number of children she desires and when she wants them, (being part of her human rights), is violated. It is submitted that punishing unmarried police women with discharge from the force has the potential to either suppress their reproductive right or breed promiscuity or worse still, encourage abortion and related offences, which are also crimes under the law in Nigeria⁷⁵, in a bid to obtain or retain their jobs. The prohibition of single motherhood by the Police Act can open the flood gate for abortions in order to stay on the job, for unmarried police women who become pregnant, in order to retain their jobs. By extension, the reproductive rights of the man who "fathers" the unborn child, is also violated in the process as the woman terminates the pregnancy to retain her job.

In terms of the appearance of police women, the Police Act paid particular attention, but in a discriminatory sense. It detailed specific items on mode of dressing and appearance of a police woman, which were not done in respect of the police men⁷⁶.

⁷⁵ See sections 228 – 230 of the criminal code Chapter 21 on Offences against Morality, Laws of the Federation (LFN) 2004 which provide that:

S. 228. Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

229. Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

230. Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

⁷⁶ Section 128 of the Police Act 1968 gave the following rules for the appearance of women police, forbidding them to wear jewellery, etc., on duty. "A woman police officer whilst in uniform shall not-

(a) wear face powder or lipstick, or wear nail varnish except those of a neutral colour; or

Asking a woman not to put on powder or lipstick, jewelry or any other jewelry except a wristwatch while on duty, is like asking some women to suspend their real identity as women or to become a man while on duty, because such things go to the very essence of their femininity. Such peculiar additions to the appearance of a woman makes her unique and boosts her self-esteem and difference from others. Again, this is discriminatory and an infringement of the constitutional rights of police women to their right to the dignity of the human person,⁷⁷ as women.

Fortunately, a Federal High Court in Ikeja Lagos has declared the provision that requires a woman police to obtain the permission of the Inspector General of Police before getting married to a suitor, as illegal and unconstitutional in the suit filed by the Women Empowerment and Legal Aid Initiative (WELA)⁷⁸, challenging the constitutional validity of the Regulation⁷⁹. The plaintiff, WELA, argued that such a requirement was a violation of the constitutional guarantee against discrimination. On the other hand, the Attorney-General of the Federation through his counsel,⁸⁰ countered by upholding the view that the Regulation was designed to protect women police officers from falling into the hands of criminals and that the purpose of the law was to prevent women police officers

(b) wear any article of jewellery other than a wedding ring, or an engagement ring or a wristwatch; or

(c) dress her hair in such fashion that it falls over the uniform collar; the hair, if long, is to be pinned or plaited over the top of the head, or if worn in short plaits, the plaits are to be tucked under the uniform cap.

⁷⁷ Section 34 (1) of the Constitution of the Federal Republic of Nigeria 1999. It provides: Every individual is entitled to respect for the dignity of his person, and accordingly.

⁷⁸ Report captioned by Channels Television. Updated May 16, 2012 : Police women no longer need Commissioner's permission to marry – Court, accessed on 27 March 2017 from <https://www.channelstv.com/tag/women-empowerment-and-legal-aid-initiative/>

⁷⁹ Regulation 124 made pursuant to the Police Act (Cap P19) Laws of the Federation of Nigeria 2004.

⁸⁰ B.R. Ashiru, counsel to the Attorney-General of the Federation in the suit filed by the Women Empowerment and Legal Aid Initiative (WELA), challenging the constitutional validity of Regulation 124 made pursuant to the Police Act (Cap P19) Laws of the Federation of Nigeria. Reported under the caption: "Police women no longer need Commissioner's permission to get married". Available at : <http://www.nairaland.com/939869/police-women-no-longer-need>

from marrying men of bad character⁸¹. He further defended the three-year ban on the ground that it was meant to ensure that a woman police officer was not pregnant “during the rigorous training she must undergo after her employment”. The Judge declared such a provision as unconstitutional and therefore annulled it⁸². Although there has not been an appeal against this judgment, but it is expected that even on appeal, such a judgment would be upheld by the court of appeal and the Supreme Courts, if the decision in *Lafia v. Nasarawa State Government* is something to go by. There is indeed rising hope for positive changes in the discriminatory laws and practices in the Nigeria Police Force, but the process needs to yield a total rejection of the discrimination against women and entrench the equality of both men and women in consonance with the non-discrimination provision of the constitution of Nigeria, 1999 (as amended).

6. Advancing the protection of women’s human rights through case law

In *Mojekwu v. Mojekwu*, the appellant, Mr. Augustine Mojekwu, relying on the Ili-Ekpe custom of some parts of South-East Nigeria, had instituted action against the respondent, Mrs. Caroline Mojekwu, claiming that he was entitled to inherit her deceased husband’s property. The basis for his claim was that the deceased, his paternal uncle, was survived by the respondent and two daughters. He claimed that since they were all women, they were excluded from inheriting property under the Ili-Ekpe

⁸¹ Marriage is classified as a private matter and a part of civil law. It is therefore not a public issue that the state should get involved in its details of when and to who a woman gets married as part of the conditions for her employment, so long as it does not violate any law and does not amount to the perpetration of a crime, fraud or the like. Generally, a woman is allowed to choose who she marries and a career in the police force should not deprive women of such a right. The Constitution further guarantees the right to private and family life. It provides in section 37 (of the CFRN 1999 as amended), that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is guaranteed and protected. Also, article 18(3) of the African Charter on Human and People’s Rights also prohibits discriminatory practices against any one on grounds of sex. Nigeria is signatory to the ACHPR charter.

⁸² In his judgment, Justice Steven Adah completely rejected the arguments of the Attorney-General of the Federation and held that Regulation 124 was illegal, null and void due to its inconsistency with Section 42 of the Constitution. The judge consequently declared the Regulation unconstitutional and proceeded to annul pursuant to Section 1(3) of the Constitution.

customary laws applying to the deceased. The appellant's Counsel argued that the Ili-Ekpe custom allowed the deceased's closest male relative to inherit if he had no son. The closest male relative would have been the appellant's father, who was also the brother of the deceased. However, the appellant's father was dead and the appellant had become his heir. As a result, the appellant claimed ownership of the deceased's house situated in the town of Onitsha, which the deceased had built on the land he had acquired from the Mgbелеkeke family of Onitsha. The respondent on her part, claimed that her son, Patrick, who had predeceased his father, had fathered an infant son who should inherit the property. Disputing this fact, the appellant claimed that Patrick had died without a son.

Based on the facts and on evidence adduced, the Court of Appeal found that the Kola Tenancy governed the devolution of the house. As a result, despite the disputed fact whether Patrick had a son at the time of his death- recognizing the Kola Tenancy as the applicable customary law rendered the absence of a male heir irrelevant since it allowed the respondent's daughters to inherit their father's property. Furthermore, the Court determined the Ili-ekpe custom to be repugnant and applied the Repugnancy Doctrine which precludes courts from enforcing any custom as law if it is contrary to public policy or repugnant to natural justice, equity and good conscience. The Appeal Court also pronounced the custom contrary to human rights guarantees in the Nigerian Constitution and in the Convention on the Elimination of all forms of Discrimination against Women, which prohibit discrimination on the ground of sex. It has been said that the decision of the Court of Appeal in *Mojekwu's* case represents a change in Nigerian jurisprudence, as the judiciary scrutinized the customary laws of inheritance through a human rights lens.

The case went further appeal to the Supreme Court⁸³. On whether the Court of Appeal erred in holding the Ili-ekpe custom to be repugnant and contradictory to the gender equality provisions provided under the Constitution of Nigeria and

⁸³ *Mojekwu v. Iwuchukwu* [2004] 4. S.C. (Pt.II). 1. At the Supreme Court, the names of the parties to the case changed because, when the decision was delivered in 2004, Caroline Mojekwu, the original party to the case, had died. As a result, her daughter, Mrs. Iwuchukwu, was substituted as a party to the case.

pertinent international human rights instruments. Judgment at the Supreme Court Faced with the same facts and legal issue, the Supreme Court argued that the rules of procedure precluded the Court of Appeal from determining whether Ili-ekpe was repugnant since neither of the parties to the case brought the validity of the custom as a legal issue before the court. The Supreme Court, led by Justice S.O. Uwaifo, criticized the Court of Appeal pronouncement as unjustified for pronouncing that the Nnewi native custom of '[o]li-ekpe' was repugnant to natural justice, equity and good conscience and that the Court of Appeal need not have considered the repugnancy of Ili-ekpe in order to give judgment in the case as it was not before the court, nor were the owners of the custom invited to address the court on the said custom.

However, the Supreme Court upheld the Court of Appeal's judgment since, in their view, it did not result in a miscarriage of justice, as the kola tenancy was indeed the applicable law, and thus the respondent and her family were rightfully held to be the owners of the property in issue. The decision in *Mojekwu v. Mojekwu* is a welcome one in the context of human right protection and promotion in respect of women in Nigeria. It has laid down a precedent that is in tandem with the spirit of the international instruments for the protection of the rights of women globally and Nigeria should not be left behind.

In a similar case, *Yetunde Tolani v. Kwara State Judicial Service Commission & Ors*⁸⁴, where also, the Court of Appeal held that the termination of the appointment of a female magistrate on the basis of her 'marital' status was wrong, illegal and void and the court ordered her immediate re-instatement, the judiciary played a very important role in averting injustice and the violation of a woman's human right on grounds connected with her marital status in Kwara State of Nigeria. The respondent had violated section 42 of the constitution that prohibits discrimination on various grounds, including the marital status of a person. In *Lafia Local Government v. Governor Nasarawa State*⁸⁵, the court interpreted section 42(1) of the 1999 constitution (as amended) and decided that it was a violation of the rights of the plaintiffs

⁸⁴ *Yetunde Tolani v Kwara State Judicial Service Commission & Ors*. Suit No. (2009) LPELR - CA/IL/2/2008.

⁸⁵ *Lafia Local Government. v. Governor, Nasarawa State* [2012] 17 NWLR (Pt. 1328) 94 at 127-128, paras. F-G.

as Nigerians, to be sent to their Local government to work against their wishes by the respondents. The Respondents were employed by the Nasarawa State Local Government Service Commission and deployed to Lafia Local Government Council. In 1999, the Government of Nasarawa State issued a policy statement wherein he directed all unified Local Government staff serving in the various local government councils other than their councils of origin to relocate to their local government councils on their existing ranks and status. Staff of various councils who were not of Nasarawa state origin were directed to remain in the councils where they were working⁸⁶.

The respondents were of the view that the policy statement of the governor was a breach of their fundamental rights entrenched in the Constitution. They applied to the High Court for the enforcement of their fundamental rights and as applicants, sought for the following reliefs:

1. A declaration that the Nasarawa State Government policy that all the unified staff of Local Government Councils of origin is unconstitutional, null and void and of no effect whatsoever .
2. An order quashing or nullifying the Nasarawa State Government policy that all the unified staff of Local Government Councils in Nasarawa State should be deployed to their Local Government Councils of origins for being unconstitutional, as same is contrary to the provisions of section 42 of the 1999 Constitution of the Federal Republic of Nigeria
3. A declaration of the court that the applicants are indigenes of Lafia Local Government Area and are entitled to be re-absorbed in their places of work with full payment of their arrears of salaries and/or emoluments or other benefits.

⁸⁶ In compliance with the policy statement, Lafia local Government Council set up a screening committee of screen its staff. (i.e. the respondents and some others). The screening committee identified the respondents as indigenes of Nasarawa Eggon Local Government Council. Acting on the screening committee's report the respondents were deployed from Lafia Local Government Council to Nasarawa Eggon Local Government Council, Nasarawa Eggon Local Government Council refused to accept the respondents.

4. A perpetual injunction restraining the respondent, their agents or servants from implementing the deployment policy of Nasarawa State Government that all unified staff of Local Government Council in the State be redeployed to their Local Government Councils of origin.

The learned trial judge dismissed the respondents' appeal to the Court of Appeal which allowed the respondents' appeal. Dissatisfied with the decision of the Court of Appeal, 1st and 2nd respondents cross – appealed to the Supreme Court. On appeal, the two issues considered were:

1. Whether the policy of the Nasarawa State Government infringes the 3rd –36th respondents' Constitutional right under section 42(1) of the 1999 Constitution
2. On constitutional right to freedom from discrimination

The court of appeal had expressed the view that a liberal approach must be adopted when interpreting the Constitution and especially the fundamental rights provisions. Section 42 of the Constitution guarantees to every citizen of Nigeria freedom from discrimination on the basis of belonging to a particular community, ethnic group, place of origin, sex, religion or political opinion. The discrimination complained about must therefore emanate from a law in force in Nigeria, or any executive or administrative action of the government. This includes laws made by the Legislative Houses and Legislation made by Local Governments, and includes policy statement. It was noted that the rights are enforceable against the state and not against individuals⁸⁷. The Appeal Court held that the policy statement by the Governor of Nasarawa State, which directed all unified Local Government Staff serving in various Local Government Councils other than Government of their Councils of origin to relocate to their Local Government Council, which ultimately culminated in the refusal of the Nasarawa Eggon Local Government Council to accept the 3rd – 36th respondents as staff of their Local Government Council, is discriminatory and unconstitutional and clearly offends the provisions of Section 41 (1) which guarantees freedom of movement for all citizens of Nigeria. It is clear from the decision of the court of appeal, that denial of the right to freedom from discrimination on grounds of

⁸⁷ See *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (Pt, 200)708.

ethnic group, place of origin, sex, religion or political opinion is an infringement of human right and the court condemned such, based on its conflict with the intendment of the Nigerian constitution.⁸⁸ In adherence to the principle of judicial precedent, it is expected that judges of the High Courts should follow this decision, according to the precedent laid down by the court of appeal and affirmed by the Supreme Court in similar cases hereafter.

While considering the plight of the workers whose jobs were almost getting lost in what may be termed 'an ethnic separation policy' of the Nasarawa State Governor, the Supreme Court held that the policy of the Nasarawa State Government was discriminatory and "contrary to the spirit and intendment of the relevant sections of the Constitution". Agreeing with the decision of the court of appeal, Justice Rhodes-Vivour delivered the lead judgment of the Supreme Court Thus:

I am in full agreement with the Court of Appeal which held that the policy does infringe the constitutional rights of the appellants (3rd – 36th respondents) against discrimination based on ethnicity or place of origin. Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of government or its agencies and ensure that the rights of the individual guaranteed by the fundamental rights provisions in the constitution are never trampled on"⁸⁹.

7. Conclusion

This article has broadly examined the Police Force in Nigeria, highlighting its work in peace and security, the importance of making women a part of the police force of the country and not just having a male dominated Police. It found that women are under-represented in the Nigeria Police Force, a situation that is globally observable as reflected in the UN Police which has as low as nine percent of women in the Peace keeping Force as at 2009. The paper discussed specific sections of the police Act which negate, conflict with and violate the provisions of the

⁸⁸ Section 42 (1)-(4) of the CFRN, 1999.

⁸⁹ Per Rhodes – Vivour, JSC Pp. 30 – 32 lines 45 – 25.

Constitution of the Federal Republic of Nigeria, 1999 (as amended), (CFRN) by discriminating against women in the force, and consequently violating the constitution. The role of the court as an impartial umpire and arbiter, being the third arm of government, was found to be an important intervention through case law in the protection of women's rights generally. The paper recommends that all women related provisions in the police Act which negate, conflict with or violate the provisions of the CFRN, should be repealed and the Police Act and regulations under it should be reviewed to make them consistent with the provisions and intendment of the CFRN. Police women should be deliberately employed in order to make the force gender sensitive, enhance sense of security, create trust and increase the confidence of the populace, especially women and children in the police services according to their varied needs.

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Section 42 (1) (b) of the CFRN, 1999
For Rhoads - v- Rhoads (2007) 15 NWLR (pt. 103) 523