

# THE NEW CONSTITUTION (THIRD ALTERATION) ACT, 2010:

THE NEW CONSTITUTION (THIRD ALTERATION) ACT, 2010: FEMINISM, GENDER IMPLICATIONS – PROSPECTS AND CHALLENGES

BEING A PAPER PRESENTED AT THE NATIONAL EXECUTIVE COUNCIL SEMINAR OF THE FEDERATION OF INTERNATIONAL WOMEN LAWYERS (FIDA) AT THE MAIN HALL OF THE UNIVERSITY OF NIGERIA, ENUGU CAMPUS, ENUGU ON THE 8TH OF JUNE, 2011

BY

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THE CONSTITUTION (THIRD ALTERATION) ACT, 2010: FEMINSIM, GENDER IMPLICATIONS, PROSPECTS AND CHALLENGES FOR THE NIGERIAN WOMAN

## 1.0 INTRODUCTION

Let me commence my presentation by thanking the National Executive Council of the International Federation of Women Lawyers [FIDA] for the honour done to me by extending an invitation to me to speak on the topic: “The Constitution (Third Alteration) Act, 2010: feminism, Gender Implications, Prospects and Challenges for the Nigerian Woman” There is no modicum of doubt about the fact that the FIDA has become a virile platform for the articulation, ventilation and propagation of informed views on national and transnational issues. The body to my mind has carved a niche for itself when it comes to advancing the cause of children and women all over the world.

FIDA is undoubtedly at the fore front of advocacy and capacity building for otherwise voiceless women and children who many are familiar victims of different social, economic and political injustices. I can say with a good measure of emphasis that the FIDA is an idea that has come to stay. For me, it is gratifying to note that the body is flourishing well in Nigeria. I have had cause to participate in a couple of activities organized under the auspices of the FIDA and I can say unequivocally that the FIDA is not only active but equally pro-active when it comes to its interest and capacity to generate ideas with respect to thematic issues affecting children and women. I am highly excited that the Association is fast becoming a phenomenon in the comity of activist Non-Governmental Organization [NGO].

Something that gladdens my heart in particular, is the realization that some of our finest women lawyers are streaming to the FIDA. That is why membership of the Association today comprises many of Nigeria’s most illustrious, indefatigable, sharp-witted and consummate lawyers in skirt. You should be kind enough to pardon if I goofed since I have just remembered that in the legal profession, there is no distinction between man and woman. This was one of the perplexing things we were thought in the course of our legal education. As we proceed in our interaction today, the veracity of this age-long view that there is no distinction along gender lines in the noble profession shall be put to test. Having said that, I urge FIDA to keep the flag flying.

Now, the topic before me is topical, contemporary, thought provoking and bound to stir our collective capacity for informed discussion and analysis of gender related matters. In making this assertion, I have duly adverted my mind to the fact that ‘genderization’ (if you permit me to use that word), has assumed the magnitude of a tsunami of global proportions. The question whether women are equal or should be equal to men continues to engage the attention and thoughts of analysts, commentators, jurists, lawyers, academics, activists, clergy and even ordinary folks. Interestingly, this consummate and sometimes, passionate engagement has been done from an interdisciplinary perspective.

I am particularly, delighted to stand before this distinguished audience to share my thoughts on feminism and gender justice. It is comforting that we are gradually getting used to discussing gender equality publicly. However, it is still troubling that discussion of issues relating to gender equality is still done with such timidity and trepidation and the consequence is that the

depth and frontiers of knowledge is hardly expanded.

It is for the above reason that I heartily welcome you to this event with a promise that feminism and gender equality – the thrust of our discussion today will be done with unhidden candour and frankness. I am expectant that at the end of today's deliberations, we would have probably gained fresh insights into how to deal with gender issues.

In our contemporary society, we are well accustomed to such terminologies as 'gender mainstreaming', 'gender equality,' 'gender budgeting,' 'gender issues' or 'gender justice'. These terms and their unmentioned variants refer to attempts to equal women with men, treat women fairly as men, accord equal status to women as men. Without much ado, it is convenient to state that the terminologies could be used to connote or express diverse sentiments in the context of diverse settings.

However, for the purpose of this paper, I will endeavour to conduct feminism and gender analysis from the perspective of the workplace. This will then translate to efforts to construct gender equality, particularly, from the perspective of whether women receive equal treatment as men when it comes to employment, labour or industrial relations issues. It is germane to adopt this analytical framework because the concept of feminism is quite amorphous and I dare say, extensive; given the way and manner it has been treated in the body of literature. Hence, any attempt to delve into this presentation without first delimitating the borders or ambit of the topic is bound to present serious analytical problems. This is because the concept of feminism could be credited with a good dose of fluidity.

I am mindful of the fact that it is impossible to discuss the entire gamut of issues covered by feminism within the scope of a paper like this. This is why it has become necessary to streamline my presentation along employment, labour and industrial relations precincts. It is actually difficult to fathom any aspect of life from which feminism and gender issues could be considered than employment which affects everyone. If you are not a worker, it is likely that you have a parent(s), brother, sister, uncle, aunt or friend who is a worker. Therefore, it has been observed with some alluring persuasion that:

Work is central to our lives. Paid or unpaid, it is the way in which we meet needs, create wealth and distribute resources. It is a source of personal identity and individual fulfillment, social status and relationships.

Let me mention the fact that this presentation will not just be restricted to what happens at the workplace, as we are equally interested in what happens in the job market. What this means is that it is worth considering whether recruitment in our society is gender-biased.

At this juncture, let me pause to briefly consider what feminism and gender inequality is all about.

## 2.0 FEMINISM AND GENDER INEQUALITY

Defining feminism is laden with problems given that there are different views as to what feminism is all about. To my mind, feminism or gender equality centers around discrimination on the basis of sex and concerns issues such as unequal pay for the same type of jobs, maternity rights, reproductive rights, unequal access to education or job opportunities or other forms of resources, sexual harassment etc. Feminism could be understood or viewed from two strands: political and intellectual feminism. Intellectual feminism distinguishes ideas or beliefs from feminist political movements.

One line of unification that cuts across both strands is that feminism is concerned with the protection of the rights of women which means the elimination of all forms of discrimination against women. In a nutshell, feminism advocates equality of sexes.

Like feminism, the notion of gender inequality is concerned itself with how women are treated unfairly in the workplace when compared to men simply because they are women. Now, this idea of unfair treatment may be real or perceived. Unfortunately, many problems associated with inter-personal relations in the workplace are rooted in perception. For instance, many women feel they are treated in a particular way simply because they are women which may not necessarily be true. Gender inequality is manifested in a number ways such as occupational sex segregation, men get hired over women, in some cases are paid lower for the same types of jobs, they are often passed up for promotion, unavailability or shortage of maternity/child care facilities, maternity rights and sexual harassment in the workplace.

I have taken time to set out the myriad of ways in which gender inequality manifests itself when it comes to employment, labour or industrial relations issues because we really need to understand what exactly the issues are. Without a good understand of the issues, we are likely to be wrongly focused and invariably misguided in gender advocacy or feminism (if you permit me).

### 2.1 STATEMENT OF THE PROBLEM (CHALLENGES OF GENDER EQUALITY)

Issues relating to gender inequality at the workplace seem to have arisen because of the realization that increasing number of workers, particularly, female workers are not protected or adequately protected by labour law. It should be borne in mind that labour law is a tool of worker protection. The reason for the inadequacy of the protection given to workers, especially, women workers in Nigeria and elsewhere is that there is a missing-link between the social, economic, political and probably, cultural assumptions upon which our labour law evolved and the current realities at the workplace.

The question is why is labour law not protective of women workers as male workers? Why is there inequality at the workplace? Put differently, what are the challenges bedeviling attempts to achieve gender equality at the workplace?

Firstly, labour laws in many developing countries were scripted and imposed on colonized countries by the colonial powers who had experienced social, economic and political conditions that were different from what obtained in traditional African societies. European and other industrialized countries have production model built around wage workers, organized trade union movements and established and functional state institutions.

But in Nigeria like other developing countries, industrial employment was rare, rather, people worked predominantly as agricultural workers, domestic workers, unpaid care workers, community workers, homeworkers etc. These categories of workers were hardly remunerated. Rather, people work for free based on the love, affection and bonds that existed between families and communities. Typically, children work on farms owned by their parents or other relations for free, women cater for their children and those of other families without any expectation of receiving payments, community members gather together on agreed days to render communal labour without receiving wages.

It could therefore be seen from the foregoing that in developing countries, wage employment was the exception rather than the rule. Yet, labour laws in these countries were modeled after the realities in industrialized countries that were at variance with what existed in our societies. Since labour law is intended to regulate industrial form of production or employment, it means that the categories of people who worked as care givers, homeworkers, agricultural workers, community workers etc are excluded from the protection accorded by labour law. This is basically because these sorts of 'work arrangements' are viewed mainly through the lens of personal relationship which is not suitable for the application of labour law.

There is gender connotation in the above scenario. In other words, the gender dimension to these sorts of relationships is obvious since women are the ones who predominantly work as domestic workers, care givers, agricultural workers, homeworkers and generally as unpaid contributing family members. Self employment is another area where women congregate. They are the quintessential petty traders who work for no one but themselves and therefore receive no payment for services rendered. Such engagements despite their economic importance are not usually regarded as 'work' for the purposes of applying labour law. In effect, this means that women are largely excluded from labour law protection.

Closely related to the above point is the fact that in traditional African societies, division of labour is gender-oriented. Generally, social, cultural and economic dynamics favour treating the man as the bread winner with the implication that whatever the woman earns is merely supplementary. Women are therefore treated as economically dependent on men. This perception has not changed much. This partly explains why women are predominantly engaged in unpaid reproductive, agricultural, child caring and household chores compared with men. By the same token, it explains why women are excluded from the protection of labour law. Labour law therefore developed as a tool to protect a specific type of worker, male worker. This as earlier noted is because the whole essence of labour law is to protect workers engaged in economic or productive activity.

From the perspective of feminism and gender equality, it is regrettable that the types of jobs that women traditionally do are regarded as non productive despite their significance to economic advancement. When a woman renders her services, it is seen as labour of love which does not have any market value. But the truth is that such work ought and do have real market value. In this wise, Teckle has pointedly argued that:

It has validated the idea that women's reproductive work and work in the home is non-productive, and "assumed by its 'invaluable' character to be a labour of love without worth on the labour market"... Yet this work has "real monetary value", because "it contributes to household income either explicitly (if products are sold) or implicitly (if households consume what they produce)"...

The categorization of the occupations traditionally assigned to women as 'family work' or 'labour of love' has meant that work done by women are either excluded from legal protection or less protected. As will be seen shortly, this context within which labour law developed has changed drastically with the result that women today are found doing very well in different forms of paid employment.

Secondly and flowing from the first point above, it is easy to discern that labour law traditionally developed as an instrument to protect a typical worker who was conceived to be a man. It can therefore be seen that labour law developed in a gender specific context. It must be appreciated that the man that was/is intended to be protected by labour law is essentially the head of the household who is not entitled to maternity and other forms of rights to which women are generally entitled. In essence, the male worker is accorded a dominant position by labour law.

A third reason why gender inequality persists in the workplace is attributable to lack of progressive reform of labour laws to bring them in tune with modern realities. Law is organic and not static. Therefore, there is always the need to reform our laws to reflect current realities. Unfortunately, this is not the case in Nigeria where many of our laws handed down to us by the British still adorne our statute book till date without any serious efforts at reforming such laws.

Having examined the reasons why existing labour laws do not give adequate protection to female workers, it is also important that I proceed to consider some other societal factors that have hindered the full integration of women into wage employment on equal status with male workers. In other words, there are other factors that contribute to the subservient position of women relative to men in our societies.

It is a matter of fact that in traditional African societies, the girl child or woman is a victim of sundry mistreatments and biases. I have deliberately used the verb 'is' to illustrate that these gender biases against the girl child are still being perpetrated.

## 2.2 CULTURAL/SOCIAL/RELIGIOUS FACTORS

There is no gainsaying that the story of our societies is the story of male dominance relative to women. Cultural beliefs are such that elevate the value and status of a boy over a girl. It is common knowledge that couples prefer and do pray to have male children in preference to girls. The girl child is often discounted which explain why in many societies, the boys are sent to schools while the girls are groomed to become housewives and mothers. In an earlier paper, I have pungently made the point that:

The traditional belief is that it was not rewarding to train female children as they were expected to marry and move to their husbands houses. Denial of access to education constrains ones ability to make meaningful contribution to nation-building by limiting upward mobility. This cultural bias greatly marginalized and adversely affected the status and capacity of women to stand on the same pedestal as men with respect to nation-building.

The marginalization of girls in terms of access to formal education or training means that only the very few advantaged ones who have the benefit of being educated are able to enter into wage employment. With respect to women, they are treated as economic dependents of men from the view points of law and social practice. The implication is that women who are able to access resources are those who are protected or backed by their fathers, brothers or husbands.

### 2.2.1 CHILD LABOUR/TRAFFICKING

Women and the girls are victims of child trafficking and abuses. I must confess that this emergent organized crime of child trafficking is reaching alarming proportions. We are daily inundated with news of how children are "sold away" into prostitution within and outside Nigeria. It is painful to realize that many of our women, including under-age girls are forced commercial sex workers in different parts of the world even in a country like Mali. Many under-age girls are normally promised lucrative jobs outside Nigeria but end up as child prostitutes. These girls are compelled to work as prostitutes while their earnings are collected by the more sophisticated women and their paid agents who operate as syndicates. Many of the children have had their growth, development and capacity to contribute to national development hampered because they are sold into slavery or bonded either by their parents or captors. There are instances when such children have been used for money making rituals. This is highly condemnable!

Children, particularly, females, suffer other forms of abuses. It is painful to hear of cases where girls of different ages are subjected to various forms of abuses. We have heard of cases where girls below 5 are abused and raped by much older men. This is a huge dent on our collective conscience as a people. Yet, these sorts of gory incidents happen daily across the landscape. I shudder to ponder on how we react to such news.

Nigerian female children are also exposed to the risk and dangers associated with child labour. All across Nigeria, one is confronted with the gory sights of child labourers. As I have noted, there are many aspects to this problem. There is for instance the use of children including girls as field labourers in plantations. They toil endlessly without receiving commensurate earnings. Another aspect of child labour that we need to look into very seriously is the use or engagement of mostly under aged children, especially, girls as domestic 'workers.' It is not uncommon for our elite to engage children to work as house-helpers or nannies as the case may be. If the truth must be told, some of us gathered here today have girls or women employed in our homes as househelps, nannies or care givers and to whom we pay pittance. Besides, we may now have any future for the development of the affected children.

Under such arrangements, the child labourers have no specified hours of work per day/week, and they can be called upon to do physically tedious, tasking, and exhaustive work that children of their employers will never be called upon to do. Painfully, these children are paid pittance which in many cases would be paid directly to agents. In any event, only a fraction of the paid amount gets to the children so engaged. Child labourers are never on equal bargaining positions with their prospective or actual employers. Such arrangements are in the nature of contra bonos mores i.e contracts against public morality.

Children engaged as child labourers under whatever guise or arrangements are deprived the opportunity of either attending

schools or learning any vocation. Child labour is a multi-dimensional scourge afflicting us as a people - a stigma on our collective conscience. It is a menace that stifles child development and prevents affected children from contributing as adults to nation-building.

The point I have tried to make is that a combination of factors have contributed to the marginalization or inequality that women continue to experience in different aspects of life such as inheritance, politics, landownership and labour and industrial relations.

### 3.0 THE NEW REALITY

I have noted that female workers have been largely excluded from the protection of labour law in Nigeria due to a number of factors that I have explained above. In particular, I have mentioned the fact that labour laws in many developing countries like Nigeria were creations of the colonial masters and were reflective of different social, political, economic and industrial conditions and backgrounds.

In Nigeria for instance, wage employment or industrial form of production was not the vogue as at the time labour law was introduced. The effect of this is that labour laws in developing countries like Nigeria offer little or no protection to a large segment of the workforce since workers in these countries were predominantly non-wage workers. Again, these non-wage workers were mainly women who worked as care givers, homeworkers, agricultural workers or community workers.

Added to these is the fact that the restricted access of girls to education in our traditional societies limited the chances of women becoming wage earners like their male counterparts. Instructively, labour law protects wage employees who were predominantly males. This is as I have commented above led to gender inequality at the workplace and in other spheres of life.

However, it is evidently clear that these assumptions or social, economic and cultural underpinnings are changing fast.

It is noteworthy that rather than the typical structure of unpaid employment in Nigeria, many people are streaming into wage employment as the country transforms from agrarian to industrial economy. Although the fact still remains that more men are involved in wage employment than women. Nonetheless, it is difficult to deny the fact that Nigerian women today are increasingly found in wage employment either in the public or private sector.

Factors such as diversification of the economy, industrialization, increased access of women to education, declining illiteracy, modernization and globalization and liberalization of trade and services to mention but a few, have combined to open up the economy and attract women into wage employment in Nigeria as in other developing countries. In this context, Graciela Bensusan has rightly noted that:

The original design problems were compounded by the fact that the law was ill adapted to the new globalization context, spawning large group of workers without de jure or de facto protection. Its role has been undermined by the increasing informalization of employment.

Women have emerged as significant agents of change and development in our societies. The role of women in driving the shift in the paradigms of development and advancement of the country cannot be underestimated or discounted. In this paper, I do not intend to catalogue the sundry roles women play in the society due to the constraints of time and space. However, I have had cause to observe that:

Generally, women have excelled in professional areas like law, medicine, accountancy, engineering, academics, science and technology, diplomacy etc. By the same token, women have made giant strides in the areas of manufacturing, production and service delivery.

Despite the fact that women are making tremendous progress in terms of their contributions to the economy, they are still issues of inequality at the workplace in terms of inequality of opportunities and treatment at the workplace, sexual harassment, pregnant women getting fired from work, unavailability of government funded or assisted day care facilities, disparity in pay for similar jobs etc.

THISDAY Newspaper of MAY 16, 2011 put the issue of discrimination against women succinctly thus:

The role of women in the development of any society cannot be over-emphasized...have been contributing immensely to the political and socio-economic growth of their families, organizations, communities and the society where they live... However, there has been no noticeable improvement in the plight of women in almost every sphere of life in the past decade, as they are being marginalized and treated unjustly as a result of barriers created by attitudinal and organizational prejudices, which block them from attaining top positions in their careers or in any environment they find themselves.

Let me also mention one area of interest. Women are still unable to actively participate in union activities and occupy leadership positions in such unions. This has actually limited the extent to which women can influence decisions bothering on gender equality at the workplace. Graciela puts the point more succinctly in this way:

The scarce presence of women in union boards or leadership, which hold the power to negotiate with employers, explains the lack of rules ensuring gender equality through collective negotiation.

From the above discussion, it is evidently clear that gender inequality or the quest for gender justice is still very much with us. I think at the root of this problem is the fact that women have reproductive responsibilities and disproportionate child care obligations relative to men.

All hope is not lost because a number of legal, policy and institutional measures have been taken to enhance the status of women in Nigeria. Many of such laws, policies and institutions exist at regional and international levels. I will briefly discuss some legislative measures that have been taken to ensure gender equality in Nigeria.

#### 4.0 LEGAL/POLICY RESPONSES

The Constitution of the Federal Republic of Nigeria, 1999 [hereinafter referred to as the 199 Constitution] expressly prohibits discrimination on the ground of age, religion, political opinion, ethnicity or sex. Let me take the liberty to quote the specific constitutional provision in this respect.

Section 42(1) of the 1999 Constitution provides that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person –

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups places of origin, sex, religion or political opinions are not made subject, or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other community, ethnic groups, places of origin, sex, religion or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.

The 1999 Constitution which is the supreme law of the land expressly provides that sex is an arbitrary and unacceptable basis for decisions regarding how a person should be treated. This provision to my mind is an all-inclusive anti-discrimination provision. It has been pointed out that the correct way to determine whether sex has been used as a basis for taking a decision “...is to ask how a member of the opposite sex is, or would be, treated in identical or broadly similar circumstances...as such, the sex with which comparison is usually made is male”

The Labour Act also contains provisions relating to maternity rights of women. Section 54 of the Labour Act provides as follows:

(1) In any public or private industrial or commercial undertaking or in branch thereof, or in any agricultural undertaking or any branch thereof, a woman-

(a) shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;

(b) shall not be permitted to work during the six weeks following her confinement;

© if she is absent from her in pursuance of paragraph (a) or (b) of this subsection and had been continuously employed by her then employer for a period of six months or more immediately prior to her absence, shall be paid not less than fifty percent of the wages she would have earned if she had not been absent; and

© shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose.

This section no doubt seeks to preserve the maternity rights of women since they bear reproductive responsibilities and have greater roles to play in child caring.

Let me quickly mention some domestic laws that are relevant to the quest for gender equality and the preservation of the dignity, worth and status of women in Nigeria:

Trafficking in Persons (Prohibition) Law- NAPTIP Act, 2003; Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act, 2005; Child Rights Act 2003; Rivers State Reproductive Health Safety Law, No. 3 of 2003; Women’s Reproductive Rights Law of Anambra State, 2005; Rivers State Schools Rights (Parents, Children and Teachers) Law No.2 of 2005; A Law to make it Unlawful to Infringe the Fundamental Rights of Widows and Widowers, and for Other Related Matters Law of Enugu State, 2001; The National Gender Policy 2006 etc.

Aside from the numerous domestic laws intended to protect children and women, there are sundry international laws. Policies and institutions that promote gender equality. For instance, there is the Maternity Protection Convention, 2000 (No. 183);

Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Workers and Family Responsibilities Convention, 1981 (No. 156) etc. Apart from a plethora of international legal regimes, there are also international labour standards governing diverse areas such as collective bargaining, forced labour, equality of opportunity and treatment, maternity protection etc.

It is pertinent for me to mention that there are a host of other laws in Nigeria targeted at ensuring equality of sexes and fairness to women not just in the area of employment and economics but also in other spheres of life. But the remarkable truth here is that despite the avalanche of laws and policy instruments aimed at ensuring gender justice in our national life, women and children, especially, female children still suffer varying degrees of injustices, discriminatory practices and gender-oriented biases in different areas of life (including workplace discrimination and harassment).

The above observation has compelled me to ruminate on what exactly is the problem. Could it be that there is a chasm between the legion of laws and their implementation and enforcement? Or could it be that we still require more laws and policies in order for us to attain optimal level of gender equality in Nigeria? What exactly is the problem?

An attempt to find answers to these questions have led me to ponder on the whether there is any prospect in using the provisions of the Constitution (Third Alteration) Act, 2010 to promote gender justice or gender equality at the workplace. Against the backdrop of this important enquiry, I have decided to address the question whether the Third Alteration Act 2010 has introduced fresh feminist or gender perspective with respect to workplace conditions?

However, before I proceed to answer this question, it is incumbent on me to make a few remarks about the National Industrial Court of Nigeria and the Third Alteration Act 2010. This is necessary in view of the fact that it is impossible to discuss the emergence of the Third Alteration Act 2010 without discussing the history or evolution of the NICN and the many challenges that have confronted the Court in the course of its well documented transformation and ascendancy from an inferior court to a constitutionally recognized superior court of record under the 1999 Constitution.

#### 4.1 BRIEF HISTORY OF THE NICN

I do not intend to bother you with a repeat of how what is today known as the NICN (see section 254A (1) of the 1999 Constitution) has transformed from relative obscurity as a specialized labour court to a superior court of record. This is because as I have observed above, the historical antecedents of the NICN are now well chronicled for the benefit of posterity.

This notwithstanding, the NICN then known as the National Industrial Court [hereinafter referred to as the NIC] was established in 1976 vide the Trade Disputes Decree No. 7 (now known as the Trade Disputes Act (TDA) of that year. This Act was amended by the Trade Disputes (Amendment) Act, 1992, which established the Court as a superior court of record. In a nutshell, the NIC under the Trade Disputes Act encountered myriad of problems arising from statutory inadequacies and dearth of infrastructure.

As a response to the challenges and statutory inadequacies, the National Industrial Court Act, 2006 [NICA 2006] was enacted by the National Assembly as the legal framework providing for the establishment, composition, jurisdiction, power etc of the Court. It suffices to state that the NICA 2006 introduced remarkable innovations aimed at correcting the legion of problems bedeviling the NIC. Importantly, the NICA 2006 established the Court as one with the status of a superior court of record. Part 11 of the Trade Disputes Act, 1992 Cap. 432 LFN 1990 was repealed by section 53 of the NICA 2006.

At this juncture, it becomes very important for me to note that the arguments as to whether the Court was a superior court of record or not did not abate despite the express provision of section 1(3) (a) of the NICA 2006 which established the Court as one with the status of a superior court of record. Also, there were clouds of doubts on whether the Court has exclusive jurisdiction in respect of subject matters contained in section 7 of the NICA 2006.

Doubts about whether the Court had exclusive jurisdiction or not, or whether the Court was a superior court of record were finally extinguished by the decision of the Supreme Court of Nigeria in the case of *The National Union of Electricity Employees & 1 Or V. Bureau of Public Enterprises*. In that case, the Supreme Court held that the NIC had no exclusive jurisdiction over matters stipulated in section 7 of the NICA 2006. The Supreme Court further held the NIC to be subordinate to the High Court. In that case the Supreme Court held that the NIC could only transmute to a superior court of record only when section 6(5) and other relevant provisions of the 1999 Constitution have been altered to that effect.

It suffices to state that the decision of the Supreme Court under reference motivated the National Assembly to alter the 1999 Constitution so as to establish the Court as a superior court of record with exclusive jurisdiction over matters now assigned to it under the 1999 Constitution. Hence, the Court is now a superior court of record under section 6(5) (cc) of the 1999 Constitution as amended by the Third Alteration Act, 2010. The appointment of the President and judges of the Court is regulated by section 254B of the 1999 Constitution as altered by the Third Alteration Act 2010.

#### 4.2 THE THIRD ALTERATION ACT 2010 AND GENDER EQUALITY: ANY PROSPECT?

In this part of the paper, I will like to consider whether the Third Alteration Act 2010 offers any prospect for attaining gender equality at the workplace. Discussion in this section will therefore be conducted on the analytical framework of provisions

contained in the Third Alteration Act that are capable of ensuring that women are treated fairly and decently at the workplace.

However, let me reproduce here the provisions relating to the exclusive jurisdiction granted to the NICN under the 1999 Constitution for special effect. Section 254C-(1) – (6) of the 1999 Constitution as amended by the Third Alteration Act 2010 provides:

“Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred on it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

Relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith;

Relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen’s Compensations Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

Relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matter connected therewith or related thereto;

Relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine;

Relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;

Relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

Relating to or connected with any dispute arising from discrimination or sexual harassment at the workplace;

Relating to, connected with or pertaining to the application or interpretation of international labour standard;

Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

Relating to the determination of any question as to the interpretation and application of any-

- (i) collective agreement;
- (ii) award or order made by an arbitral tribunal in respect of
  - A trade dispute or a trade union dispute;
- (iii) award or judgment of the court;
- (iv) term of settlement of any trade dispute;
- (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
- (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;
- (vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;

Relating to or connected with trade disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;

Relating to-

- (i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;
- (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and
- (iii) such other jurisdiction, civil or criminal and whether to the



exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;

(m) relating to or connected with the registration of collective agreements.

(2) Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

(3) The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters on which jurisdictions are conferred on the Court by this Constitution or any other Act or Law:

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.

(4) The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.

(5) The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly or by any other Law.

(6) Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National Industrial Court from matters in sub-section 5 of this section to the Court of Appeal.

As demonstrated below, some of the subsections quoted above offer prospects for the attainment gender equality at the workplace. To this end, I have highlighted section 254C-(1) (a), (f), (g), (h), (i) & (2).

Permit me to point out that some countries, particularly, industrialized countries, the International Labour Organization [ILO] and other international bodies have developed workplace practices, conditions or ethics that are described variously as international labour practices, international labour standards, fair labour practices or gender equality measures.

It is also important to observe that sundry conventions and treaties have been developed under the auspices of the United Nations and the ILO that seek to promote decent, fair, and equal treatment of women at the workplace.

The Third Alteration Act 2010 has expressly provided that the National Industrial Court shall have jurisdiction over disputes:

(1) relating to or connected with international best practices in labour, employment and industrial relations matters; (2) relating to or connected with discrimination or sexual harassment at the workplace; (3) relating to or connected with the application of international labour standards; and (4) relating to or pertaining to child labour, child abuse, human trafficking or any matter connected with the aforementioned matters.

What this simply means is that conduct or workplace practices such as refusal to employ pregnant women, request for pregnancy test before being hired, request for HIV/AIDS test, dismissal for reasons bothering on pregnancy or child care, unequal pay for similar jobs of equal value, non-provision of government aided/funded child care faculties, untoward or indecent behavior by men towards women, cultural and societal stereotyping against women and other sundry discriminatory practices against women can now be tested against the backdrop of international best practices, international labour standards or unfair labour practices. Also, disputes arising from the engagement of women and children under conditions that negate international law or international best practices or unfair labour practices against women can now be adjudicated upon by the NICN.

This is a welcome development from the perspective of feminism and gender equality. It is particularly remarkable that the 1999 Constitution has expressly provided for a constitutional basis upon which condemnable acts of sexual harassment at the workplace can be challenged.

I would like to make two important points at this juncture.

Firstly, discriminatory acts on the basis of gender could be direct or indirect. The more difficult aspect is when acts of discrimination are to be presumed (that is indirect discrimination). Discriminatory acts may be presumed:

[W]here a measure which is apparently neutral in fact predominantly affects workers of one sex, without it being necessary to establish that discrimination was intended.

Secondly, what amounts to international best practices is a question of fact to be proved by the person urging the Court to take cognizance of such practices.

Another significant window of opportunity provided by the Third Alteration Act 2010 that could promote gender equity is the exclusive jurisdiction granted to the NICN in respect of disputes relating to child abuse, child labour and human trafficking.

We all know that women and female children, especially, girls are the predominant victims of these vices against humanity. It is therefore reassuring from the standpoint of gender justice that a constitutionally recognized specialized court can handle such matters. This we must admit is a fresh feminism perspective when viewed through the lens of a new constitutional order. Another important prospect for the promotion of gender equality introduced by the Third Alteration Act could be discovered when one clinically examines the implications of section 254C-(2) of the 1999 Constitution as amended by the Third Alteration Act 2010 which states that:

Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

This provision is of compelling importance when one considers that there a number of conventions, treaties and protocols that seek to instill gender equality in our societies. Many of these international instruments have been ratified but not domesticated by Nigeria. Under the dual system of jurisprudence that Nigeria operates, international law is to be applied and enforced by Nigerian courts once they have been domesticated through Acts of the National Assembly pursuant to section 12 of the 1999 Constitution. Such laws are then enforced and applied not as international laws per se, but by virtue of their adoption by the internal law of the State. Therefore, section 12 of the 1999 Constitution provides that:

No treaty between the Federation and any other country shall  
Have the force of law except to the extent to which any such  
Treaty has been enacted into law by the National Assembly.

See also *Gani Fawehinmi v. General Sanni Abacha & Anr.*

Permit me to mention some of these conventions and treaties. The implication of this is that any of the legion of international laws, particularly, those made under the auspices of the ILO which have been ratified but still to be domesticated by the National Assembly do not have the force of law in Nigeria.

It is therefore, a welcome development that the National Industrial Court of Nigeria can now apply any of such international instruments ratified by Nigeria provided they relate to labour, employment, workplace, industrial relations or matters connected therewith.

Many of these laws are helpful in altering the paradigm of gender inequality in the workplace. So where acts that offend the provisions of these municipal or international laws occur, it might be worthwhile to test the validity or otherwise of such actions in the Court. This is not a straightforward or done deal situation. An applicant or party seeking to invoke the jurisdiction of the Court under this provision among other things would have to establish that the treaty has been ratified by Nigeria and the required number of state-parties to the instrument and that the time set for coming effect of the law has passed. I expect that the jurisprudence in this area will develop and become clearer with the passage of time.

From the foregoing discussion, you will agree with me that the Third Alteration Act 2010 contains provisions which if properly explored might usefully spawn changes of monumental proportions from the perspective of workplace gender equality.

I cannot end this section without examining some of the challenges to the prospect of using the Third Alteration Act 2010 to catalyze the drive towards gender justice at the workplace.

Firstly, beautiful as the prospects discussed above might look, I need to caution that there is a risk involved in transplanting legal regimes, institutions or policies. Without any doubt, legal transplant is a veritable means to develop and social reorder or reengineer the society. But such a venture must be done mindful of the possibility of discrepancies in social, political, economic and cultural underpinnings in both the transferring and recipient countries. Thus, legal transplant must be done 'in context'.

Secondly, it is worth noting that that the generality of our people are not accustomed resolving disputes through the medium of litigation. In Yoruba jurisprudence, it is said that a *kin losi kotu bo wa sore* (meaning that parties do not resume friendly relations after returning from the court). Closely related to this is the fact that the cost of litigation may be too expensive for the ordinary worker to bear. There is also the possibility of a backlash on an employee who challenges the conduct of the employer or more 'powerful' employee. In the circumstances, glaring acts of discrimination, abuse or unfairness may go unchallenged.

However, the Third Alteration Act 2010 has addressed some of the misgivings expressed above by empowering the NICN to establish an Alternative Dispute Resolution Centre to handle cases and matters over which the Court has been given jurisdiction. See section 254C-(3) of the 1999 Constitution as amended by the Third Alteration Act 2010. Hence, acrimonies associated with litigation as a means of settling disputes might be minimized through the adoption of ADR mechanisms by the NICN.

Thirdly, the NICN is a fledging Court on which the Third Alteration Act has placed enormous responsibilities. There are

challenges relating to manpower, infrastructure and funding. The Court needs to appoint more judges and support staff, build more courts and expand its infrastructural base with a view to bringing justice nearer to the people. Finally, the Court requires more funding to be able to cope with the new daunting but surmountable challenges.

## 5.0 THE WAY FORWARD

Law reform is a desirable way to tackle problems of inequality of sexes through progressive reform of labour law to reflect current realities in the social, economic and political arena. As I noted above, the realities or assumptions upon which labour law developed have changed. It bears repeating that increased access to education and training, industrialization with consequent change in production model, globalization and modernization have all combined to enhance the entrance of women into wage employment. This is why labour law and other laws of the land should be reformed or reviewed to reflect current realities and incorporate global best practices in labour, employment and industrial relations.

In particular, the maternity rights of women must be enhanced. The truth is that raising a family is a cherished value. Yet, pregnancy and child care make working women vulnerable to discriminatory actions of employers. Pregnant and nursing mother need adequate protection so that they can have enough time to give birth, recover and to nurse their children without the fear of losing their jobs or remunerations due to pregnancy or maternity responsibilities.

It may be particularly useful for Nigeria to borrow from the experiences of other countries that have more elaborate constitutional provisions to guarantee equality of status to women. Let take India for illustrative example. With respect to equality of opportunity in matters of public employment, the Constitution of India provides in Article 16 that:

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

One other solution lies in ensuring that our laws are strictly enforced. No useful laws no matter how good serve no useful purposes in the absence of enforcement. This is why I seriously urge that enforcement of relevant laws should be stepped up so that we can move to equality of sexes in our national life. Proper enforcement of laws is a significant antidote to non-functionality of legislation.

In order to ensure that anti-sex discrimination laws are enforced, NGOs, and public spirited bodies like the Nigeria Bar Association must be ready to seek women and female children who are victims of all forms of sex-based discrimination get justice. Many of these victims are either ignorant of the protections accorded to them by law or they lack the means, courage or determination to challenge their employers. There is always the fear of a backlash when an employees challenges the actions or policies of the employer. It is even more precarious if the employer is government or its institution. Hence organizations like the Federation of International Women Lawyers, Women Committee of the Senior Staff Association of Nigerian Universities, the Nigerian Feminist Forum etc must be prepared to galvanize and empower women through the medium of training, advocacy and sundry capacity building initiatives. The most potent weapon with which women could be armed is knowledge. After all, education is power.

It is also for compelling for the various women oriented groups to re-strategize and key into the activities of UN Women, a body that has been at the fore-front of evolving social strategies, plans and practices to enhance the status, worth and position of women all over the world.

An interrelated view that I wish to propose is that women should take more than passing interest in law-making. There are opportunities for them to sponsor or influence laws that might be beneficial to women in the society. Women can sponsor private member bills or participate in public hearings that precede the passage of bills either at the level of State Houses of Assembly or the National Assembly. I also suggest that concerted efforts should be made to draw the attention of the National Assembly to relevant treaties, conventions and protocols that require domestication in line with section 12 of the 1999 Constitution.

Also, I propose that in order to complement the establishment of gender desks in ministries, departments and agencies of government there should be Special Advisers on gender issues at Federal and State levels for the President and the Governors respectively. It is not sufficient for us to continue to pay lip service to the idea of gender equality. What is required is the introduction of practical steps in the form of enduring policies and institutions to drive the required change.

Furthermore, it is necessary to accelerate and reengineer efforts to eliminate societal practices and values that are discriminatory against women particularly, female children in our various societies. Concerted efforts should be to ensure progressive enrolment of female children in schools.

In addition to the above, I recommend that women should participate more quantitatively and qualitatively in union activities.

In fact they should strive to occupy leadership positions in organized unions. This advice is important in view of the recent revelation in THISDAY Newspaper of May 18, 2001 to the effect that:

Though women membership of in trade union is quite significant, ... The decision making organ of trade unions in the country are (sic) dominated by men though some trade unions adopt the principle of affirmative action by creating one or two positions for women in the national administrative committee consisting of twelve members. This is a gross marginalization of womenfolk in trade unions.

My last prescription relates to the need for attitudinal change on the part of men as essential agents of decision-making, policy formulation and even women themselves. The task of enthroning gender neutral practices at the workplace and the society in general is the responsibility of all and sundry.

## 6.0 CONCLUSION

In the course of this paper, I have made the point that feminism and gender equality are terms used to describe the same side of a coin. This is because both concepts are concerned with the need to ensure that women receive equal treatments as men. I have also noted that the focus of the paper to be gender equality from the perspective of the workplace since this perspective guarantees an informed analytical framework.

Furthermore, I have argued that the major problem giving rise to workplace inequality is attributable to the fact that the underlying assumptions upon which labour law developed have radically challenged with the result that a greater population of the workforce consisting mainly of women have been excluded from the protection of labour law.

I have also demonstrated that modern realities have combined with some societal values and practices to prejudice the position of women at the workplace and other spheres of human endeavor.

I have demonstrated that these underlying assumptions have changed because women are now very visible in wage employment due to rapid industrialization, increased access to education facilities, the effects of globalization, modernization and trade liberalization.

Significant too, is the fact that I have shown that the Third Alteration Act 2010 offers useful prospects for the promotion and actualization of gender equality at the workplace.

In the final analysis, let me make this solemn observation with all sense of responsibilities that gender equality based on my understanding does not imply or presupposes a trade off of positions between men and women. The essence of gender equality is not to ensure female dominance while men become subservient. No. It simply implies the need to establish new kinds of relationships and institutions that accommodate just and fair relations between both sexes.

I make the above observations due to need to tread cautiously in our advocacy for gender equality so as to avoid misconceptions that could precipitate unintended consequences. We do not need to shy away from the fact that many women have hidden under the umbrella of gender equality to disorient and alter the premise upon which God's cherished institution (marriage) is founded. Even God Himself subscribes to the fact the women must submit to the Husband who is the head of the family like Christ who is the Head of the Church. This hallowed principle is also well enshrined in Islamic teachings. We must therefore, be sensitive to basic religious and cultural codes; not to prejudice the status of women but to preserve institutions that we are obliged to preserve.

Thank you all for listening.

1994 Commission for Social Justice/Institute for Public Policy Research, "Social Justice Strategies for National Renewal" London, Vintage, p. 151.

See generally, Stanford Encyclopedia of Philosophy, "Topics in Feminism," online: [www.plato.stanford.edu/entries/feminism-topics/](http://www.plato.stanford.edu/entries/feminism-topics/)

Ibid.

Tzehainesh Tekle, "Labour Law and Worker Protection in the South," in *Labour Law and Worker Protection in Developing Countries*, eds. (Geneva: International Labour Office, 2010) at p.3 [Tekle, "Labour Law and Worker Protection in the South"].

Ibid. at pp. 36 – 37.

Ibid. at p. 15.

See Graciela Bensusan, "Labour Law in Latin America: The Gap Between Norms and Reality" in *Labour Law and Worker Protection in the Developing Countries* at p. 142. [Graciela, "Labour Law in Latin America"].

Hon. Justice B. A. Adejumo, OFR, "The Role of Women and Children in Nation-Building: A Legal Perspective" at pp. 8-9. This paper is a compendium on the role of women and children in the task of nation-building. It provides useful insights into the various factors clogging full realization of the potentials of women and children and how to remedy the situation. THISDAY Newspaper of May 18, 2011 at p. 37. I am referring to the Newspaper coverage of what transpired at Conference on Gender Equality with the theme 'Building Women for Leadership Position'. The Conference was organized by the National Women Committee of the Senior Staff Association of Nigeria Universities in Ilorin Kwara State.

Graciela, "Labour Law in Latin America" supra note 7 at p. 165.

Alan Lakin, "The Impact of the Equal Treatment Directive in the United Kingdom: Blessing or Burden?" in Professor Alan Dashwood & Dr. Siofra O'Leary eds., *The Principle of Equal Treatment in E.C. Law: A Collection of Papers by the Centre for European Studies*, Cambridge [London: Sweet & Maxwell, 1997] at p.181. [Alan, "The Impact of Equal Treatment Directive"].

See generally, Joy Ngozi Ezeilo, *Human Rights Documents Relevant to Women and Children's Rights in Nigeria* (Lagos: WomenAid Collective, 2008)

For more information, see generally ILO website for more at: < <http://www.ilo.org/global/lang-en/index.htm> > accessed on June 6, 2011.

The Constitution (Third Alteration) Act, 2010 hereinafter referred to as the Third Alteration Act, alters the 1999 Constitution in order to establish the National Industrial Court of Nigeria as a superior court of record under the Constitution. For a comprehensive knowledge of the new provisions introduced in the 1999 Constitution vide the Third Alteration Act, 2010, see Federal Republic of Nigeria Official Gazette No. 20 Vol. 98 of 7th March, 2011.

For informed analysis about the history of the NICN and the challenges that confronted the Court see for instance....

This was formerly known as Decree No. 47 of 1992.

See section 19(2) of the TDA 1992 Cap. 432 LFN 1990.

For a comprehensive discussion of the innovations introduced by the NICA 2006, see generally, Hon. Justice B. A. Adejumo, OFR, "The National Industrial Court of Nigeria: Past, Present and Future" Being a Paper Delivered at the Refresher Course Organized for Judicial Officers of Between 3 – 5 Years Post Appointment by the National Judicial Institute, Abuja, on the 24th March, 2011.

Unreported Suit No. SC/62/2004.

See section 254C-(1) (f) of the 1999 Constitution as amended by the Third Alteration Act 2010.

See the opinion of Advocate General Mancini in Case 30/85, *Teuling v. Bedrijfsvereniging voor de Vhemishce Industrie*

[1987] E.C.R. 2497.

H. O. Agarwal, *International Law & Human Rights*, 16th ed. (Allahabad: Central Law Publications, 2009) at p. 41 [Agarwal, *International Law & Human Rights*].

(2000) 6 NWLR (pt.160) 228 at 288.

By the same token, Article 42 of the Indian Constitution requires the State to make provisions for securing just and humane conditions of work and maternity reliefs. See Usha Sharma, *Female Labour in India*, (New Delhi: Mittal Publications, 2006) at p. 130 [Sharma, *Female Labour in India*].