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A Jurisprudence of Affirmative Action as a Platform for Women Empowerment in Nigeria Today*

Abstract

The paper is a study of the possibility of using affirmative action as a tool to close the socio-political and economic gap between men and women in Nigeria. Studies show that women over the centuries have been the receptacle of unfortunate discrimination in respect of economic opportunities and social and political participation occasioned by a time-honoured caesura drawn by an all-too patriarchal mindset that flourished and is still thriving on male chauvinism and domination, among other factors. But it is albeit discovered that employment of affirmative action unto the desired goal would encounter an *obex* in the existing legal regime in which all forms of discrimination are outlawed. Yet affirmative action is, no doubt, in the shape of positive discrimination. This paper however looks beyond the *lex scripta* and reads affirmative action as a means of restitution and redress of past injustices against a group in order to aid it get along with others. This stratagem is seen as a *sine qua non* in a country which professes to be largest black democracy in which everyone, male or female, should be handed with a sense of belonging.

1. Preface

Today, more than ever before, gender issues particularly those concerning the status and role of women in human development are increasingly becoming items of global agenda. It was only in the past that gender questions were regarded as a mere Euro-American palaver. But now in the light of modern globalization when what happens in one corner of the world resonates in the other, discussions in Africa today mainly among women academics and human rights scholars are

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dominated with a search for a panacea towards empowering the women folk economically, socially and politically. The result is that the issue of women empowerment has become a subject of hot debates in many theoretical intersections and interdisciplinary areas such as Law Education, Social Sciences, Theology, Arts and Humanities. No doubt, the focal point of these discussions is that women have been victims of centuries–old discriminatory practices which organized themselves into a veritable clawback against their socio-political and economic participation in their respective societies. Often, this is sequel to a culture of patriarchy and male chauvinism which ethos and pathos consist in an entrenched degradation of women status. This attitude that hardly stands the test of reasonableness is at best only justified by strict adherence to unwholesome traditionalism.

In Nigeria, the search for the best way to mainstream women into the socio-economic and political matrix of the nation had, no doubt, been multi – faceted. At one time, it was thought that frequent formation of women associations[1] together with their feminist aims and objective will provide the desired desideratum. At another time, the establishment of the Ministry of Women Affairs both in federal and state levels were looked unto by the respective governments as the almighty formula that would lead to the much desired gender inclusive El Dorado. Alongside this governmental lip-service efforts, as the ministries are carefully starved of funds, are organized organogrammes designed by the so-called 'first ladies' who pose as messiah-mothers. But the truth is that these structures are created as means of siphoning and milking dry the public coffers already placed at the mercy of the ladies' husbands. Better Life for Rural Women, Child Care Trust, Family Support Programme[2] and so on, constitute instances of such public treasury conduit pipe mechanism. Because they lack constitutional backing, the first lady offices normally come under the

1. *Cf. S. Akinrinade, "Women Associations" In* ***Newswatch Magazine****, Dec. 10, 1990 Edition, p. 31.*
2. *These are pet programmes initiated by the wives of the respective Heads of State in Nigeria. While Better Life for Rural Women was started by Maryam Babangida (wife of Gen. Ibrahim Babangida), Family Support Programme was established by Mariam Abacha (the wife of Gen. Sani Abacha). Again, Child Care Trust was introduced by Stella Obasanjo (the wife of Chief Olusegun Obasanjo).*

cloak of non-governmental organization which nevertheless are protected and barricaded with state machinery and apparatuses.

Yet, at another time, anti-discriminatory legislations[3] and formulation of policies on women became the in thing. Although this latter effort is praiseworthy, it still leaves much to be desired. True, various legislative houses, federal and state, are known to have enacted one anti-discriminatory law or the other especially those that outlaw obnoxious cultural and other practices against women. But it seems gender problem in Nigeria is beyond the issue of legislation. It is perhaps that of mustering the moral and political will to implement and enforce the relevant laws so made.

Of recent, however, following the practices in many jurisdictions but especially the resolutions of Beijing Platform for Action[4], the pendulum of feminist discourses in Nigeria has tilted into recommending Affirmative Action as the only succour that will provide the oil in the troubled waters of gender mathematics. According to this view, at least 30%, for a start, of positions in government offices and paralstatals, and also those of the private sector will be reserved for women in order to ensure a considerable representation in the policy making corridors of power. It is argued that with this process of gender mainstreaming, women can now speak for themselves rather than be victims of male collectivist anthill arrangements that often take decisions on behalf of women on issues concerning women but in which they were carefully schemed out and not allowed to participate. Ever since, debates are heated up on whether or not affirmative action is constitutional or contrary to established laws. While some regard it as a form of reverse discrimination, others look at it as rather positive and the only remedy that will restitute the battered image of women caused by centuries of subjugation, oppression, and exclusion.

3 *Foremost among these municipal legislations are section 17 (2) (3) & S. 42 of the Constitution of the FRN 1999. Another instance of the legislations is* ***The Prohibition of Infringement of a Widow's and Widower's Fundamental Human Rights Law, No 3 of 2001*** *by Enugu State House of Assembly. Again, in 2000, The Edo State Government passed a law against prostitution and trafficking in human persons through amendment of some of the provisions of the* ***Criminal Code Law****, cap. 48 of the Laws of Edo State of Nigeria. This Law is referred to as* ***Edo State Criminal Code (Amendment Law), 2000****. There is also the Nigerian* ***National Policy on Women, 2000****.*

4. *Cf.* ***Beijing Declaration****, and* ***Beijing Platform for Action (1995)****.*

The main thrust of this paper is to analyze the concept of affirmative action and explore the possibility of its being the platform for the integral empowerment of women in Nigeria. It will equally delineate the points along which the debate on Affirmative Action in many jurisdictions has raged over the years. Is the concept of Affirmative Action actually known to law? Will it not tantamount to using a bad means to achieving a good end, hoping that latter the end will justify the means? What are the prospects and challenges of employing the principle of affirmative Action to pursue the programme of women empowerment in Nigeria today? Are women really disempowered? How and to what extent are women disempowered? Attempts to answer these questions will be our guide in this study. Our approach is largely critical and jurisprudential.

2. Women Disempowerment and Discrimination

There is no gainsaying that consciously or unconsciously the women folk had been at the receiving end of male marginalization, patriarchal bravadoes and masculine intimidation over the years. One would therefore want to start off this discussion with a foray into the socio-anthropological matrix that keeps women down. This may, after all, have a bearing on the propriety or impropriety of the option for affirmative action as a response to the feminic predicament. Insofar as Nigerian attitude towards women are not any different from those of other patriarchal societies, it may be apposite for this purpose to go beyond Nigeria in order to excavate the common denominator of the issue at hand. As far back as human mind can excogitate, women folk had been an object of disdain in a world that became all-too patriarchal. The sociology and anthropology of various cultures and religions are replete with cases of marginalization of women which frequency is not merely occasional but widespread. According to the Indian theories of reincarnation and Karma, for instance, a woman cannot enter into nirvana (paradise) unless she is first reborn in a man. In the same vein, a man who leads a wicked life is expected by Hindu-Buddhist eschatology to reincarnate into a woman by the next life[5]. The dualism of the Persian religion too associated men with the good and women

5 *See K. H. Peschke, Christian Ethics, Vol. 2, Bangalore: Theological Publications in India, 1994, p. 404.*

with evil[6]. Even in Christian ecclesiastical circles, women are frequently portrayed in the negative light. Uchem has given some instances of this attitude[7]. Church fathers like Tertulian, Augustine, Origen, Ambrose, Gregory the Great, Thomas Aquinas and others are notorious with anti-women comments which continue to inform the behaviour and attitude of many Church men today. The Arab world deeply infused with Islam does not paint a different picture. For although, it is sometimes erroneously said that Koran denies women a soul, yet their concrete social condition in the Moslem Community (*ummah*) is one of great restriction on their freedom, and enhances total subordination to the authority of their husbands[8]. This subjection of women to masculine rule in Islam is the prescription of the primary sources of Sharia. Thus, while verse 4: 43 of the Koran holds that men are in charge of women, the Hadith contains the saying of Mohammed that "that nation would not prosper which hands over the reigns of its government to a woman".

Again, a sociological excursus into various parts of the world brings this feminine problem to the fore. Oraegbunam has done a detailed study[9] of this problem. He recounts that in Asia, a newborn baby is buried alive, and generally in oriental countries, a toddler starves to death in an orphanage, unwanted and unattended to. The story is not different in some countries of West Africa where a business man buys a nine-year old child. The common denominator of all these tragedies is that all the victims are girls who were considered dispensable on account of their being females. These are not isolated cases. In some parts of Africa, thousands of girls and young women are sold into slavery, some for very little money even in modern times. It is also reported that each year, hundreds of thousands of young girls are sold or forced into prostitution mostly in Asia and Africa. Most of these girls are commoditized and trafficked to Europe and America where their

6. *Ibid.*
7. *Cf. generally R. N. Uchem, Beyond Veiling: A Response to the Issues in Women Experience of Subjugation in African Christian Cultures, Enugu. Snaap Press Ltd, 2002, pp. 37-40.*
8. *I.K.E. Oraegbunam, Women's Rights in Sharia Law vis-à-vis the Constitution of the Federal Republic of Nigeria, 1999, LL.B Thesis, Nnamdi Azikiwe University, Awka, Nigeria, 2006, pp. 40-51.*
9. *See generally I.K.E. Oraegbunam, "From Patriarchy to Women Empowerment: Socio-Religious Challenges and Prospects", In Gender and Behaviour, volume 4, Number 2, 2006, pp. 852-866.*

activities become a huge source of income for their exporters. Worse still, population figures for a number of countries indicate that as many as hundred million girls are 'missing'. This is evidently due to abortion, infanticide, or sheer neglect of females.[10]

In the ancient Greco-Roman worldview, the female status was generally so low that women were mostly left uneducated, regarded as mere chattels and treated as legal minors and "necessary evils". But this subhuman feminine existence finds its most eloquent expression among the Jews. Contemporary Jewish sources are full of animosities towards women who in Jewish history are in every respect seen as inferior to men. Men are advised to talk very little with their own wives, still less with other women. Women lived as far as possible withdrawn from public view. De Vaux observes that in the worshipping community of the Jews, women's access to the temple is limited only to the women's fore-court, and with respect to the obligation of prayer, they were put in the same category as slaves. They could be married as early as the age of twelve. The female divorcees are the most socially beaten, battered and bruised by a system that even finds a codified justification in the Torah and the Talmud.[11]

On the economic level, women are so disempowered that it has become fashionable to describe the concept of poverty as having been feminized and adorned with a woman's face. This is in spite of the enormous contribution women make in the development of world economy. Sometime ago, the president of the World Bank explained that "women do two-thirds of the world's work, yet they earn only one-tenth of the world's income and own less than one percent of the world's property".[12] According to a United Nations report, more than 70 percent of over 1.3 billion people of the world who live in dire poverty are women. The report observes that the number of rural women living in abject poverty rose by nearly 50 percent over the past three decades.[13]

10. *See I.K.E. Oraegbunam, "Women Empowerment and Participation in Politics: An Important Index of Nigerian Democracy". In Koinonia, vol 1, No 3, 2002, p. 38. The author leaned on the special edition of Awake Magazine April, 1998 titled "Women", and published by Watchtower Bible and Tract Society of New York. See page 3 thereof.*
11. *R. de Vaux, Ancient Israel: Its Life and Institutions, London: Longman, 1973, p. 39.*
12. *Reported in Awake Magazine, Op. Cit., p. 4.*
13. *Ibid.*

In Nigeria, this feminic poverty is directly proportional to women's dearth of economic opportunities and autonomy, and lack of access to economic resources including credit and land ownership. Women are rather merely looked upon as baby factories, which produce numerous children whom they spend all their lives and energies trying to sustain. Yet at the end, especially the rural woman, being a bird of passage, is forgotten by the society and ends in a cycle of servitude.

Besides, it is the discrimination against women as a matter of legal and policy provisions in Nigeria that is most troubling. A mention of some of these policies and legislations can be quite illustrative. Thus, without inquiring into the propriety of section 55 of the Penal Code[14] in the light of respect for human dignity, it is still good to note that the jurisprudence on which it is based is very discriminatory for it to allow a man to chastise his wife without a reciprocal guarantee of such right to a woman. Again, our labour legislations are replete with this sort of discrimination. Sections 55, 56 and 57 of the Labour Act[15] seek to protect women from night and underground work, and empower the Minister of Labour to make regulations that prohibit women from undertaking certain specified jobs. Though section 55 (2) of the Act exempts certain categories of women from the prohibition, yet such exemption does not obliterate the fact that the provision limits women's access to work in spite of the seemingly good intentions on the law. In the same vein, the Nigerian Taxation policies do not paint a different picture. By these, tax relief is denied females and granted only to the males who, as the policies assume, have the responsibility of catering for family[16]. This practice, no doubt, flies in the face of reality as it is well known that all over the country, there abound single mothers on

14. *Cap 89, Laws of the Northern Nigeria, 1963.*
15. *Cap L1, Laws of the Federation of Nigeria, 2004.*
16. *The author is of the view that this discriminatory practice be amended to include women for the purposes of tax relieves. A fortiori, other discriminatory laws, even though in favour of women alone, should receive equal attention. For instance, under the law of agency, the cohabitation made of creation of agency whereby, in the case of necessaries, a woman can obtain necessaries and credit her husband who is obliged to pay therefor (cf. Miss Gray Ltd v. Earl of Cathcart (1922) 38 T.L.R 562) should be revisited to extend to a husband creating such agency on behalf of the wife. Again, under section 10 of the Criminal Code, while a wife of a Christian marriage cannot be adjudged an accessory after the fact of offences committed by the husband, the law is very silent in the case of husbands not becoming accessory after offences committed by the wives. Moreover, in section 33 of the same code, the defence of compulsion is available only to the wife, being silent in the case of husbands. It is the opinion of the writer that these provisions be amended to be more gender–inclusive.*

whose shoulders rests the sole responsibility of meeting the material needs of their children. Denying single mothers tax rebates and concessions which attitude has its roots in cultural role stereotypes will tantamount to not only discriminating against the women but also punishing them for being single mothers. Our argument is given a fillip by the fact that the practice is not extended to bachelors claiming tax allowances for children.

Another worrisome practice is entrenched in Police Regulations[17] 121, 122, 123, 124, 125, 126 and 127 which make no pretensions about discriminating against women on the basis of their sex. For instance, Regulation 124 states to the effect that a woman police officer who is desirous of marrying must first apply in writing to the Commissioner of Police requesting permission to marry and giving the particulars of the fiancé. Such permission can only be given if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years. As if this is not enough, number 127 of the regulation holds that 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. No doubt, the implications of these anti – women police regulations are quite enormous. To begin with, number 124 of the regulation has changed marriage from a contract between spouses to one between an employer and an employee and placed the burden on the woman. This is particularly worrisome as what is demanded by the regulation is not mere notification but real permission which can be refused under certain relevant conditions. On its turn, the regulation at number 127 criminalizes single motherhood and punishes the 'guilty' woman by terminating her appointment. Certainly, all these discriminatory regulations run counter to natural law rights to marriage, family life,

17. *Cf the Nigerian Police Regulation 1968 pursuant to section 46 of Decree No 41 of 1967 (now cap P19, Laws of the Federation of Nigeria, 2004).*

and self – determination as enshrined in many international human right instruments[18] to which Nigeria is a signatory. But it is under the various Nigerian customary laws and practices that discrimination against women is agog. Foremost among these is the rule of inheritance. Under some customary laws, it is not even enough that women are disinherited; they are even inheritable by the kinsmen of their dead husbands and fathers. What is more appalling is that this inhuman treatment has even received some judicial blessings from case law.[19] Traditionally, the patrilineal Nigerian society excludes women from ownership of landed property.[20] Other areas in which women are discriminated against include widowhood rites, divorce, marriage, education, social roles, etc.[21]

The above instances and more constitute only a tip of an iceberg of discriminatory practices against the women folk. They may be relevant to the extent that they demonstrate why women are kept down in the socio-economic and political involvement in their various societies. Given this centuries–old subjugation and oppression, one wonders whether and how women can catch up with men in the aspects of human life under discussion. In what immediately follows, we shall dwell on the efforts made already by women and human right activists to turn around the feminic problematique.

18. *Cf. for instance, Article 16 of Universal Declaration of Human Rights (UDHR) 1948; Article 6 (2) (a) & 10 of Declaration on the Elimination of Discrimination Against Women 1967; Art 16 of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979; Art 1 of Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964; Art. 23 of International Covenant on Civil and Political Rights (ICCPR) 1976; Art. 10 of International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976; Art. 2 of African Charter on Human and Peoples Rights (ACHPR), 1981, etc. It must be noted that African Charter has been domesticated in line with the provisions of section 12 of the 1999 Constitution of the FRN (see Ogugu v. The state (1994) 9 NWLR (pt 366)1, Abacha v. Fawehinmi (2006) 6 NWLR (pt 660), 228, Okogie v. A.G Lagos (1981) 1 NCLR 218; Fawehinmi v. Abacha (1996) 9 NWLR (pt 475) 710.*

19. *See Suberu v. Sunmonu (1957) 2 FSC 31; Nezianya v. Okagbue (1963) 1ANLR 352; Oshilaja v. Oshilaja (1972) 10 CCHCJ 11, Ogunkoya V. Ogunkoya (1988) Suit No CA/L 46, 88@ 6; Akinubi v. Akinubi (2001) CHR, p 176 @ 218. But contrast with Mojekwu v. Mojekwu (1997) 5NWLR (pt 567) 208; Mojekwu v. Iwuchukwu (2004) 11NWLR (pt 883) 196.*

20. *Cf. Section 43 of Constitution of the FRN, 1999; see also Married Women's Property Act, 1882 (an Act of British Parliament that is a Statute of General Application in Nigeria); Article 17 of UDHR, Art 17 of ACHPR; Married Women Property Law of Western Region of Nigeria, 1959.*

21. *See generally SNC Obi, Human Rights at the Grass Roots in Nigeria (With special Reference to Women's Rights), Nkpor: Mas Founders Publ. Ltd, 2000.*

3. Women Emancipation and Empowerment

For many years of human existence, it was taken for granted that women are not only inferior to men but also of weaker sex than them. The 19th century renowned English poet, Alfred Tennyson, articulates this belief succinctly: "woman is the lesser man, and all thy passions, matched with mine, are as moonlight unto sunlight and as water unto wine".[22] This mindset underscores the reality of a situation where women were not even aware of the discrimination against them.

Although by late 19th century, few voices had started to be heard against this status quo, it was mainly in the 1950's and 1960's that women especially in Europe and America started becoming conscious of their status as having been measured merely through a patriarchal barometer. This awareness later gave rise to certain reactions which aim it is, as claimed, to better the lot of the womenfolk. The result is that both in public and private lives, the watchwords became 'women empowerment', 'women liberation', 'women emancipation', 'women struggle', and so on. It became the abiding intention of the agitators of this front to seek for equality, complementarity, and inclusiveness as opposed to hierarchy, subjugation and patriarchal power dominance.

Certainly, the above light of consciousness must have been kindled by the promulgation of the Universal Declaration of Human Rights in 1948 which reaffirms faith in the equal rights of men and women, inter alia. No wonder, Articles 1, 2 and 7 thereof contain specific provisions on man – woman equality before the law and in the enjoyment of human rights. Ever since, this element of equality has been the pivot of subsequent international law instruments,[23] and national constitutions.[24]

In Nigeria, however, the struggle by women to liberate themselves from the clutches of male chauvinism predates the drafting of the

22. *Cited in I.K.E Oraegbunam, "Women Empowerment and Participation in Polities..." in Koinonia, vol. 1, No. 3, 2002, p. 40.*

23. *See Articles 1 and 2 of UDHR. Articles 1, 2 & 3 of ACHPR; Art. 2 of CEDAW; Articles 1, 2 & 10 of DEDAW.*

24. *See for instance sections 17 (2) & (3), and 42 of the Constitution of the Federal Republic of Nigeria, 1999.*

Universal Declaration of Human Rights. As far back as the pre-colonial times, Nigerian women, especially of Igbo extraction, had always struggled to mainstream themselves into the economic and political equation of the society. In this era, Igbo women, with little or no exception, engaged regularly in trade in their own localities. Basden observes that "practically, the whole of the trade in the Ibo country is in the hands of the women, and they were extremely capable".[25]

Politically too, men and women in patrilineal society did not de facto have equal roles. But Igbo women, nonetheless, played active part in the political life of the communities. Nnamani observes with regard to the Igbo that when a woman is a good leader, with some economic clout, power of oratory and good ideas, she becomes an authority to be reckoned with in the overall political organization of the community. The effect of this is that the status of such a woman does not have to depend on the feats of her husband, but on her own achievement.

But in the midst of insistent partriachy, Nigerian women have not kept silent. Instead of sitting down bemoaning their status, they have borne the crosses of their own struggles and sometimes gracefully. With perhaps more female enrolment in Nigerian schools today, women are now arming themselves with sound education and professional skills. They now acquire veritable ammunitions in battle for identity, recognition, and relevance. A lot of anti-discriminatory laws have been enacted as a result of the awareness created by women activists. In some faculties of law in Nigeria, the academic curriculum has been rationalized to include studies in women and minority rights. It is hoped that one day, centers for women studies will be established in our universities. The result of all these efforts is that many women have now taken positions in the corridors of literary, professional and political powers. Yet, because of centuries of marginalization, Nigeria women are still sour-footed in many aspects of life for which many other means are bound to be employed. It has been argued that one veritable instance of such means is the principle of Affirmative Action. Thus, representatives of Nigerian women from all walks of life rose from the March 10, 1999 conference organized in Abuja by the

25. *G. T. Basden, Among the Ibos of Nigeria, London: Frank Cass & Co, 1921, p. 90.*

National Centre for Women Development in conjunction with the British Council to mark the International Women's Day, with the demand that 30 percent of political appointments into the cabinet of the then expected civilian administration be reserved for women[26]. This demand was said to be in tandem with the Affirmative Action Resolution (AAR) emergent from the fourth World Conference on Women in Beijing, China, 1995. It will therefore be necessary to direct our curiousity on the meaning of Affirmative Action and see what prospects it holds for women empowerment in Nigeria in the light of the nation's jurisprudence.

4 Affirmative Action: Meaning and Controversy

There seems to be unanimity among scholars on the meaning of Affirmative Action. Opinions, however, differ on whether or not it is legitimate to apply the principle in concrete life situations given the "equal opportunity" clause enshrined in many a national constitution. Yet in spite of relevant nuances, what is meant by Affirmative Action has come under several appellations such as positive discrimination, reverse discrimination, equality of result, quota system, reservation, majority–minority districting, and so on.

The Oxford Concise Dictionary of Politics defines Affirmative Action as a "policy designed to correct past practices of discrimination against any historically disadvantaged group"[27]. It implies taking proactive steps to encourage the group to participate in the socio-economic and political life of the country. Similarly, in the words of Lowi et al, Affirmative Action connotes a "policy or programme fashioned to redress historic injustices committed against specific groups by making special efforts to provide members of these groups with access to educational and employment opportunities".[28] This description of Affirmative Action agrees with that offered in Wikipedia Free Encyclopaedia:

26. *Cf. F. Abejoh – Audu, "Conference Wants 3000 of Political Appointments for Women" In The Punch, March 15, 1999, p. 4.*
27. *I. Mclean & A. Mcmillan (eds.), Oxford Concise Dictionary of Politics, New York: Oxford Univ. Press Inc., 2003, p. 4.*
28. *T. J. Lowi, B. Ginsberg & K. A. Shepsle, American Government: Power and Purpose, 9th Edition, New York: W. W. Norton & Company, 2006, p. 149.*

> Polices intended to promote access to education or employment aimed at a historically socio-politically non-dominant group....Motivation for affirmative action policies is to redress the effects of past and current wrongful discrimination and to encourage public institutions...to be more representative of the population.[29]

Ikpeze has underscored the practicality and the urgency of the measures required by Affirmative Action by describing it as "a short – term and temporary positive measure taken to shore up and bring about equality of all by supporting and helping people who were discriminated against or disadvantaged in the past".[30] It involves the actual taking of decisive steps towards correcting unjust situations and injustices meted out to a known group. As a matter of fact, these decisive steps constitute a deliberate corrective action for adjusting previous imbalances in a given society. Citing Tom Mullen, Ikpeze adopts the idea of Affirmative Action as attempts to make progress towards substantive rather than merely formal equality or opportunity for those groups which are currently under–represented in significant positions in various societies[31].

From the definitions above, certain words and phrases are quite salient and reoccurring, namely, 'short term', 'temporary', 'corrective', 'actual', 'historical', 'past discrimination', and so on. The implication is that Affirmative Action is temporary and designed for quicker and short-term effect rather than permanent and continuous. It is actual and action-oriented as opposed to mere theoretical constructs. It is equally corrective and redressive in nature and not preventive or prohibitive. Rather, it is aimed at remedying and restituting for a historically entrenched past discriminations which denied the relevant disadvantaged or non-dominant group an opportunity to get along with others. This is perhaps why Buchan Love likened Affirmative Action to an image of a running race thus:

29. http://en.wikipedia.org/wiki/affirmative_action.
30. O. V. C. Ikpeze, *Affirmative Action, Lecture Notes on Women & Minority Rights Law, Nnamdi Azikiwe University, Awka, Nigeria, 2008, p.1.*
31. *Ibid.*

> If a race has started between two runners, and one is shackled, simply removing the chains and allowing the runners to continue is insufficient because one runner must be moved up to an equal position. Otherwise the runner will never make it[32].

Be that as it may, the issue of Affirmative Action has divided concerned scholars and policy makers into debating camps. Proponents argue that Affirmative Action is the best set of principles to eliminate unfair decision-making in view of compensating for advantages that other groups have had such as through institutional racism, institutional sexism, or other historical circumstances. They believe that other measures such as mere legislation will not result in optimal or fair decision-making since, according to Delgado,[33] past historical and current discrimination severely limited access to educational opportunities and job experiences in which women are greatly disadvantaged. The implication is that women for example, are not dully represented among those who will make the required law, for instance. Hence, people in positions of power are likely to hire those they already know or people from similar backgrounds or both,[34] and thus have their ostensible measures biased toward the same groups who are already empowered.[35]

Moreover, proponents are quite convinced that legislative and even judicial means are not enough to overcome long-entrenched discrimination. One reason, according to them, is that these measures frequently focus only on issues of formal litigable rights that are particularly prone to statutory and judicial resolution. Thus, while formal litigation – related strategies are inevitably resource intensive and dependent upon clear "smoking gun" evidence of overt bias or bigotry, prejudice especially if already entrenched can take on myriad subtle, yet effective, forms. Hence, private and public institutions often

32. Cited in Ibid.
33. R. Delgado, "Merit and Affirmative Action" In The Coming Race War? And Other Apocalyptic Tales of America after Affirmative Action and Welfare, New York: New York University Press 1996. For this paper, see http://academic.udayton.edu/race/04needs/affirm02.htm.
34. Cf. L. Guinier, "Saving Affirmative Action, and a Process for Elites to Choose Elites" In Village Voice, July 2 – July 8, 2003. See http://www.vukkagevoice.com/news/0327,guinier,45235,1.html.
35. S. Sturm and L. Guinier, "The Future of Affirmative Action: Reclaiming the Innovative Ideal" In California Law Review, July, 1996. See online at http://www.law.harvard.edu/faculty/guinier/racetalks/future_aa01.htm.

seem impervious to the winds of change long after court decisions or statutes formally ended discrimination.[36]

It is against the above backdrop that supporters of Affirmative Action generally advocate it either as a means to address past discriminations or to enhance racial, ethnic, gender or other diversity of some minority groups.[37] They glory in the fact that the end result, a more diversified grouping, justifies the means in spite of the Equal Protection or Opportunity Clause in the constitution.

On the other rung of the ladder, however, are those who are vehemently opposed to the application of the principle. They argue that the use of Affirmative Action is counter productive since it requires the very discrimination it seeks to eliminate and promotes prejudice by increasing resentment of those who are the beneficiaries from those who have been adversely affected by the policy.[38] Opponents of Affirmative Action also hold that since most people of the present were not part of the system that oppressed the minorities, it would be unfair for those who did not commit the crime to suffer as a result of Affirmative Action. Again, these opponents are of the view that since all people have equal rights, no individual's rights should be sacrificed to compensate for another person's being taken away. Yet, another argument against this principle is that it promotes inefficiency.[39] According to this view, Affirmative Action sometimes represses the qualified in favour of the not – so – qualified. This happens when, for example, one may be very qualified for a certain job, but may be turned down in favour of a person who is less qualified but is targeted for Affirmative Action in that job. The Affirmative Action antagonists argue that if this happens on a grand scale, the speed and efficiency which are supposed to be the hallmark of national developmental indices will thus be sacrificed. Opponents further claim that Affirmative Action, especially in relation to college or professional admissions, hurts those it intends to help. The reason offered is that it

36. See Affirmative Action Review, Part 2. http://womenshistory.about.com/ library/text/ gov/blgov_aa_02htm.
37. R. L. Anita, "What is the Constitutional Status of Affirmative Action?: Reading Tea Leaves". In Affirmative Action: A Dialogue on Race, Gender, Equality and Law in America XIII. 2 (1998). 16 Nov. 2006. http://www.abanet.org/publiced/focus/spr98const.html.
38. Cf. http://en.wikipedia.org/wiki/affirmative_action.
39. Ibid.

causes 'mismatching' effect by admitting minority students who are less qualified than their peers into more rigorous programmes wherein they cannot keep up.[40]

Be that as it may, different countries and policy makers in spite of the above opposing views, have at one time or the other favoured or disapproved of the application of Affirmative Action.In some, Affirmative Action is seen as a mere guideline for social diversity. In some others, it is strictly applied by way of rigid quota. In others yet, the principle has been rendered illegal both in public and private places. Can Affirmative Action find its way into the socio-political and economic considerations in Nigeria? If it can, will women be beneficiaries in relation to much yearned empowerment? Is Affirmative Action compatible with the present legal and constitutional framework in Nigeria? In other words, what is its legal status? Can there ever be a jurisprudential justification for its implementation *vis-a vis* the law and the woman question in Nigeria? Therefore, it may be *apropos* to first and foremost, inquire into the legal arrangement in which Affirmative Action as a principle is meant to operate in Nigeria.

5. Jurisprudence and Legal Status of Affirmative Action in Nigeria.

A source of much controversy surrounding the formulation and employment of Affirmative Action policy in many jurisdictions is the question of whether or not the practice will fit into the pigeon-role of the prevailing legal framework. In Nigeria, there is *prima facie* no express legislation or executive order authorizing Affirmative Action. In fact, the nation's grundnorm at its section 42 seems to preclude any form of preferential treatment. The section provides that;

1. 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

40. *Ibid.*

of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion 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 citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.[41]

The above non-discriminatory provision is also made a cardinal objective of state policy by virtue of section 15 (2) of 1999 Constitution which prohibits discrimination on the bases of place of origin, sex, religion, status, ethnic group, linguistic association and ties. A cursory look at the provisions will reveal that they are quite relevant to discussions on legal status of Affirmative Action in Nigeria. While paragraph (b) of section 42(1) prohibits according privileges and advantages as against the yearnings by Affirmative Action protagonists, paragraph (a) thereof gives an added fillip to the claims of the opponents of the principle who maintain that nobody should be subjected to restriction or disability. In other words, in relation to our subject matter, giving women advantages over men or restricting men in favour of women in designated areas in the name of Affirmative Action would seem to violate the provisions of section 42 (1) of 1999 Constitution. As if this is not enough, subsection 2 thereof states that "no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth". What this means is that one cannot be denied opportunities available to one simply because one does not belong to a particular gender since the idea of gender is, no doubt, a circumstance of one's birth. This equal opportunity principle is also well enshrined in section 17 (2) (a) of the Constitution to the effect that "every citizen shall have equality of rights, obligations and opportunities before the law". Again, the welfare of all persons on the principles of equality, inter alia, is a clause on the provision of the Preamble to the Constitution.

41. This right to freedom from discrimination had frequently been a subject of judicial enforcement. Cf. J.A. Adewale & Ors v. Gov. Lateef Jakande of Lagos & Ors (1981) 1 N.C.L.R. 262.

Be that as it may, the above observations do not say the last word. A more hermeneutical consideration would not fail to showcase some veritable clawbacks that may constitute leverage for those who yearn for Affirmative Action. First and foremost, the provision of section 42 on the right to freedom from discrimination is not absolute. By *reductio ad absurdum*, the prohibition in the section becomes justified only when the alleged or intended discrimination is based only on the circumstances of the victim's birth such as gender, ethnic group, particular community, or on such other characteristic indices such as religion or political opinion. The domino effect is that aside those, there may be other reasons, legitimate as it were, why a particular person or group of persons may be subjects of advantage or privilege in relation to any executive or legislative act. Such reasons can be for the sake of diversity, compelling government interest in addressing identifiable past discriminations,[42] providing a level playing field, and so on. This is perhaps why Malemi in analyzing the provisions of section 42 holds that the right to freedom from discrimination does not deter government from implementing special programmes and measures to assist specific categories of people who are under particular disabilities, disadvantaged or less opportune communities and minorities to enable them catch up, or properly participate in the development of a modern and united country"[43]. This observation by Malemi is nothing short of advocacy for Affirmative Action. Again, the fact that the provision of section 42 is not meant to be absolute is also corroborated by the content of subsection (3) thereof which states that "nothing in subsection (1) shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any persons to any office under the state... or to an office in the service of a body corporate established directly by any law in force in Nigeria".[44] That is to say, nobody has really any fundamental right to be appointed to any office whatsoever. Appointments or restrictions may after all be determined by the provision of a relevant particular law, not excluding those on Affirmative Action.

42. See the American case of Adarand Constructors, Inc v. Pena, 115 S. Ct. 2097 (1995).
43. E. Malemi, The Nigerian Constitutional Law, Lagos: Princeton Publishing Co., 2006, p. 238.
44. See for instance sections 65 – 66, 106 –107, 131, 137, 177, 182 and 289. These provisions have to do with what make for qualifications or disqualifications of people seeking to be elected into various political posts.

Similarly, the Federal Character principle is yet another constitutional provision usually pointed at by Affirmative Action vanguards as supporting their claims. Hence, a community reading of the combined provisions of sections 14 (3) & (4), 15 (4) and 153 (1) (c) of 1999 Constitution and sections 8 & 9 of part 1 of the third schedule thereof may be quite illustrative. While sections 14 (3) & (4) and 15 (2) of the Constitution substantially provide for federal character system as a fundamental objective and directive principle of state policy, sections 8 and 9 of part 1 of third schedule provide for the administration, enforcement and implementation of the principle. It may be helpful to reproduce the content of some of the provisions. Section 14 provides:

(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government, or in any of its agencies.

(4) The composition of the Government of a state, a local government council, or any of the agencies of such Government or council, and the conduct of affairs of the Government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority, and the need to promote a sense of belonging and loyalty among all peoples of the federation.

Again, section 15 (4) enjoins the state to "foster a feeling of belonging and of involvement among the various peoples of the federation, to the end that loyalty to the nation shall override sectional loyalties". There is no doubt that the underlined expressions in the above provisions had been interpreted along geographical and geopolitical lines. Thus, the expressions such as "sectional groups" (section 14 (3)), "diversity of peoples" (section 14 (4)), "various peoples of the federation" (section 14 (4), "sense of belonging" (section 14 (3)), "among all peoples of the

federation" (section 14 (4)) had, for the purpose of application of the federal character principle, been given a mere geographical interpretation. But it need not be, for there is nothing in the expressions that excludes considerations on the basis of gender. Hence the 'sectionalism' embedded in the expression "sectional groups" can be a consequence of male domination in matters of political appointment. Again, "sense of belonging" should not be limited to geopolitical confines but also has to refer to the belongingness of both males and females. More, the ideas of "various peoples", "all peoples", "diversity of peoples" of the federation have to be given a broad interpretation to include peoples of both genders.

There is no gainsaying the importance of the federal character principle in a multi-cultural and heterogeneous society like Nigeria for the purpose of fostering national unity and loyalty. It is therefore to ensure proper implementation of this principle that a commission (Federal Character Commission) was established by section 153 (1) (c) of the Constitution and by virtue of sections 8 and 9 of part 1 of third schedule of Constitution charged with the duties of working out equitable formula for the distribution of all cadres of posts and promote, monitor and enforce compliance with the proportional sharing of designated posts at all levels of government. Although, the commission had narrowly focused their attention on whether or not states, ethnic groups or geopolitical zones are adequately represented in the designated areas, a more comprehensive coverage would certainly include issues of gender and religion which also constitute important indices in Nigerian national equation.

Be that as it may, the principle of federal character, assuming it is sincerely applied, does not even present a complete solution to the existing imbalance. At best, the principle takes care of the present situation. What of the circumstances of those who are victims of entrenched past discrimination and which effect had continued to be a clawback against their progress even in present times? It therefore follows that for a proper implementation of the equal opportunity provisions in the Constitution, preferential treatment, albeit temporarily, in relevant areas should be given to the appropriate groups in order for them to meet and be able to exercise their constitutional

right to equality of opportunity in national development.

In more developed jurisdiction, Affirmative Action had been applied sequel to outright and direct legislations, executive orders or judicial pronouncements. In the United States, New Deal Wagner Act of 1935 dealing with unfair labour practice actually started Affirmative Action as we know it today. The year 1964 witnessed the making of the Civil Rights Act that buttressed the practice of Affirmative Action. In 1961, President J. F. Kennedy's Executive Order 109256 established the Presidential Committee on Equal Opportunity. By 1965, President Johnson reiterated and rein- forced it by virtue of the Executive Order 11246 which created opportunity in Federal Employment, and Executive Order 10375 to include non – discrimination on the basis of gender. Although all these American efforts are normally alluded to as foundational polices that hatched the practiced of Affirmative action, they did no more than intending an anti-thesis to relevant forms of discrimination in the polity. It is actually in Australia that Affirmative Action gained ascendancy with the Equal Employment Opportunity for Women Act 1986, and the Racial Discrimination Act 1975. Again, the New Economic Policy in Malaysia is a form of an existing Affirmative Action strategy where, following the racial clashes of 1969, the policy gives preferential treatment in corporate equity, and places in higher education to the indigenous people (*Bumipatra*) who form the majority.

In Nigeria, pockets of what can be described as Affirmative Action are quite few. First is the 1972/1973 Indigenization and Nationalization Policy which sought to remedy the colonial era domination of the Nigerian economic sector by the expatriate companies. According to this policy, the Nigeria business world was divided into two schedules. While schedule 1 contained some 367 enterprises reserved exclusively to Nigerians, schedule 2 had a list of 595 enterprises that must allow for 40% equity owned by Nigerians. Later, this policy was embodied in Nigerian Enterprises Promotion Decree 1972[45] with subsequent amendments and which Decree added the third schedule. The purpose of the decree was to reserve for Nigerians those areas of economic

45. Other major statutes that were enacted to restrict the rights of aliens to participate in business in Nigeria included the Exchange Control Act 1962, The Immigration Act 1963, The Securities and Exchange Commission Act 1988, and the Industrial Development Coordinating Commissions Act, 1988.

activities which they had the capital and experience to run effectively while ensuring that in other areas, they were given an opportunity to participate in running the business where they could. According to Orojo[46] the effect of the 1972 Decree was not only to prohibit aliens from starting certain reserved new businesses, but also to compel them to sell to Nigerians all their interests in any business included in the first schedule of the Decree, and to transfer to Nigerians their interests in companies in the second Schedule in excess of 40% of the equity, or 60% in a third Schedule companies. This is purely an Affirmative Action policy in which the disadvantaged Nigerian majority was given a legislative leverage to catch up. However, with the intractable economic problems of the 1980s and 1990s, a new liberal economic policy was put in place. Thus, with a view to encouraging foreign investments, most of the restrictions on alien participation in business in Nigeria were removed.[47]

Further, the case of **Badejo v. Federal Ministry of Education and ors**[48] was decided in a way that gave a judicial blessing to the practice of Affirmative Action. In this case, an 11 year old primary school girl instituted an action through her father (acting as her next friend) against the defendants at the High Court for denying her admission into the Federal Government College. It was her case that those who scored lower marks than her were admitted by the defendants. In the ultimate appeal to the apex court, it was held that quota system on which basis the appellant was denied admission is a quantitative restriction as to minimum or maximum for the purpose of upliftment or redress of imbalances. This practice which is the proportional share assigned to a person or group of persons is also seen as an allotment as currently

46. J.O. Orojo, Company Law and Practice in Nigeria, Durban: Lexis Nexis Butterworth's, 2006, p. 4.
47. It is to this end that the Nigerian Investment Promotion Act, 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995 were enacted. The former replaced the Industrial Development Coordinating Commissions Act 1988, while the latter in section 37 (2) provided that if the provisions of any other law or enactment were inconsistent with those of the Act, the provisions of the other law shall, to the extent of the inconsistency, be void. Accordingly, the restrictive provisions of the Exchange Control Act 1962, the Exchange Control (Anti – Sabotage) Act 1984, the Immigration Act 1963, the Nigerian Enterprises Promotion Act, 1989, and the Industrial Development Coordinating Commission Act 1988 are no more applicable, and apart from the Immigration Act, all these laws have been omitted from the Laws of the Federation of Nigeria 2004. Furthermore, under the Investment and Securities Act, 1999, the approval of the Securities and Exchange Commission to transactions in a company in which aliens participate is no longer required.
48. *(1996) 8 NWLR, Pt 464, 15 SC.*

employed in Joint Admissions and Matriculation Board Admissions to universities, and in the unity college admissions. By this system, it is possible and easier for one who comes from academically less advanced states to gain admission into a federal university, polytechnic or college with a lower mark than the one from the so-called academically advanced state who may not even be given admission. The rationale is for the less advanced state to catch up with others.

Thus, the above considerations represent the legal situation vis-à-vis Affirmative Action in Nigeria. It may be necessary to expressly enact laws in favour of Affirmative Action as in so many other jurisdictions. However, unless the Constitution is itself amended to

that effect,[49] validity of such laws may meet with difficulty when placed *parri passu* with the grundnorm which provisions are not explicit with regard to Affirmative Action. As things stand now, it will take only an activist judiciary to read Affirmative Action into the constitutional provisions we analyzed above. In what immediately follows, we shall delineate the areas along which the principle of Affirmative Action can be applied in relation to women empowerment in Nigeria together with the attendant challenges.

6. Affirmative Action, National Development and Women Empowerment in Nigeria.

Prospects

Until the declaration of the United Nations decade for women, gender issues received only a meager attention in Nigerian national planning. Thus, development strategy in Nigeria since the colonial period has not been gender sensitive. Studies show that this is a result of continuous interplay between the male dominated indigenous cultures and the inherited patriarchy from the colonial administration as well as the strong inhibiting effects of traditionalism and capitalist ideologies. The net effect is a wholesale disempowerment and marginalization of

49. *Nigeria can borrow a leaf from India wherein although the Constitution in its preamble, fundamental Rights, Fundamental Duties and Directive Principles grants gender equality, yet it empowers the State to adopt measures of positive discrimination in favour of women. Cf. paragraph 1.1 of Indian National Policy for the Empowerment of Women, 2006.*

women in socio-political, religio-cultural and economic participation as has been adumbrated above. However, the year 2000, perhaps following the UN declaration, witnessed a bold step initiative by the Federal Government of Nigeria to evolve a National Policy on Women (hereinafter to be referred to as the policy). Formulated in quite a comprehensive manner, the only major problem associated with the policy is lack of not only adequate implementation strategy in some areas but also the social and political will to translate into action the contents of the policy. It is thus the convinction of the present writer that employment of Affirmative Action would constitute a veritable platform for the successful implementation of the feminic policy. For over 23 years, Nigeria became a state party to the Convention for Elimination of all forms of Discrimination against Women (CEDAW). She signed and ratified the provisions of the convention without any reservation.

Hence, it goes without saying that parties to the convention intend to provide an antidote to all forms of discrimination against women. A careful perusal of the instruments would portray that such antidote includes temporary or even extra-ordinary tactics that would help eliminate all forms of discrimination against women. Thus, Article 4 thereof enjoins the state parties to adopt "temporary special measures aimed at accelerating de facto equality between men and women". The Article further holds that such temporary measures should not be considered as discrimination provided they do not entail the maintenance of unequal or separate standard, and should be discontinued when the objectives of equality of opportunity and treatment have been achieved. There is no doubt that such temporary measures would irresistibly include Affirmative Action strategy. In what follows immediately, we shall mark out the major areas along which Affirmative Action can be used to achieve the goals of the National Policy, and thus act as a platform of action for women empowerment in Nigeria.

Politics and Decision Making

By 1991 census, women make 48.6% of the Nigerian population.[50] Yet, it is crystal clear and hardly needs statistical data to prove that this natural and numerical strength of women is not reflected in the political life and decision-making processes and structures of the nation. For instance, women made up only about 1.6% of the total representation in the post-1999 election governance.[51] Women are neither adequately represented at both the federal and state legislatures nor are they in executive councils, higher judicial bench, and other national assignments. It is therefore strongly suggested that a considerable percentage of representation be reserved for women in, for instance, village cabinets, political party offices, social organizations, political and managerial positions, board appointments into federal and state parastatals, key diplomatic assignments and other national and international undertakings. Note that Article 15. 3 of the Policy enjoins the National assembly to provide legislation to the effect that "affirmative action of proportionate ratio or 30% representation for women is implemented to increase the total representative seats in each of the legislative houses, executive arm, party hierarchy, and structures for a trial period of up to the year 2010". Unfortunately, this is far from realized today. No doubt, mainstreaming of the female gender is quite germane for integral national development as it will augur well with not only tapping the natural endowment of women in connection therewith but also for full realization of a democracy in which all would have a sense of belonging.

Economy, Education, and Employment

Economy, education and work constitute one of the most important indices of national and self development. The three sectors are correlative factors as one leads to the other. It may thus be *ad rem* to discuss them together. The Policy observes that though women are

50. *Cf Article 2.1 of Nigerian "National Policy on Women", in Shelter Rights Initiative, Legal Protection of Women's Rights, Lagos: Mbeyi & Associates (Nig) Ltd., 2001, p. 16. Note that the most recent national census (2006) was fraught with a lot of inadequacies, malpractices and manipulation of figures. Most of the South-East geopolitical zone did not participate in the exercise*
51. *O. V. C. Ikpeze, Op. Cit.*

responsible for the production of the agricultural labour force and for producing over 70% of the nation's food supply, yet only about 13.3% of women were employed in the formal sector until the 1980s[52]. The Policy further notes that "this proportion declined rapidly in the process of economic reconstruction as a result of the rationalization of public and private sector workers and cuts in production capacity in industry".[53] Also, the majority of female workers are in lower cadre occupations. This is, for instance, reflected in the distribution of academic staff of Nigerian universities in 1991/92 thus[54]:

Ranks	Professors /Assoc. Professor/ Readers	Senior lecturers	Research fellows	Junior Research Fellows
Males	1706	2774	4186	1711
Females	71	306	690	308

The statistics will not be substantially different from what obtains today. Due to centuries of marginalization of women in education, perhaps until very recently, only few women acquire the academic excellence to be in high echelon of academic employ of tertiary institution as compared to primary and post primary schools where women teachers are increasingly becoming the majority at the lower levels. Thus, the national summary of primary school statistics depicts the following:[55]

Year	1991	1995	1991-1995 Difference
Total Male Teachers	202,753	230,287	27,534
Total Female Teachers	150,847	207,332	56,485

The picture is the same for post primary schools where male teachers increased by 4,401 and females by 12,230 in 1995.

The above unfortunate arrangement is sequel to an entrenched past discrimination against women enrolment in education which structure

52. *Article 2.1 & 2.2 of the Policy.*
53. *Article 2.2 of the Policy.*
54. *Cited in U. Obiora & C. Onyekachi, "Excerpts from NGO Alternative Report to the UN CEDAW, Articles 10, 11&13" in Gender Action, vol 1, No 2, May – August 1998, p.4.*
55. *Ibid.*

is being adjusted only lately. Thus, the Policy observes that women in professional and managerial occupations constitute only 18% of that grade of employment.[56] This is a natural consequence of a system in which due to socio-cultural role stereotypes and capitalist credo, certain disciplinary areas are, albeit erroneously, seen as fit only for the males while their complements reserved for the females. Hence, this gender polarity in tertiary education is quite manifest in the student enrolment into Nigerian polytechnics in 1993/1994:[57]

Disciplines	Males	Females
Building technology	2087	479
Civil Engineering	3114	340
Mechanical Engineering	3958	222
General Agric Technology	1130	140
Animal Production and Forestry	202	64
Soil and Water Engineering	229	8
Catering and Hotel Management	478	1059
Secretarial Administration	2737	5880

The statistics show that while there is a geometric increase in the enrolment of women into "feminized" courses such as Catering and Hotel Management, and Secretarial Administration, the number of women in the so-called male disciplines (especially Engineering and Natural Sciences) is insignificant in relation to that of males.

The situation in the civil service sector does not paint a different picture either. Recently, the United Nations Development Project (UNDP) field survey held in Adamawa State, Nigeria, revealed that female civil servants occupy lower positions between grade levels 01-10 with only about 11% -19% holding positions in grade levels 11 and above.[58] In Plateau State, Nigeria, out of the total staff strength of about 26, 200 cutting across 48 agencies in the State, 6562 are females while 19599 are males representing 25.04% and 74.80% respectively. Breaking it down reveals an average of 4 top male decision makers to 1 female counterpart. Further, out of about 516 staff in the middle management

56. *Cf. Article 2.3 of the Policy.*
57. *Cited in U. Obiora & C. Onyekachi, Art. Cit., p.4.*
58. *O.V.C Ikpeze, Op. Cit.*

cadre (levels 8-12), women account for 1416 (27.43%) while men 3745 (72.56%), and out of 48 agencies, 44 are headed by men as overall bosses while only 4 are headed by women.[59] The statistics can go on and on.

As a result of the above gender inequity in the education and civil service sector, and more, most Nigerian women are economically disempowered as they are merely informal sector workers who predominate in micro enterprises with little or no access to credit, technology and other supports required to build up capital. This had reduced women's access to substantial regular income and social status in the society. Further, the economic restructuring programme on account of its emphasis on economic growth, inter alia, rationalized a substantial proportion of female workers out of the public and private sectors since they were on the lowest rungs of the occupation hierarchy. In the face of this socio-economic malaise, women need be empowered through appropriate education and skill development programmes. While maintaining the free-market approach, women shall be encouraged and supported through various entrepreneurship programmes to invest in large, medium and small-scale enterprises. All these can be realized through appropriate gender budgeting[60] in which, by means of Affirmative Action, suitable resource is mapped out perhaps as an incentive to encourage women catch up in relevant areas. In addition, the capacity of women shall be strengthened for entry into professional and managerial occupations where their skills/labour would be useful for increasing capacity utilization in industry. To belly the ache, the student loan board and bursary award schemes which until late seventies were functional can be resuscitated to assist the mass of economically poor female students fund their education. Added to this should be use of Affirmative Action in admission into tertiary institutions with regard to those courses in which women are poorly enrolled.

59. *Cited in U. Obiora & C. Onyekachi, Art. Cit. p. 7.*
60. *For more information about the concept of gender budgeting, see G. Nnadozie, 'Gender Budgeting' In Anambra State Ministry of Women Affairs and Social Development, Gender Mainstreaming as a Tool for Sustainable Grass Root Development, 1st Edition: Nimo, Rex Charles and Patrick Ltd. 2007, pp 35-43.*

Agriculture and Industry

Agriculture and industry are so important sectorial areas in national socio-economic growth that they need special attention. Women, no doubt, provide an estimated 60-80% of labour input in agriculture especially in food production, processing and marketing.[61] Yet, women's contribution in this regard is not adequately acknowledged in the development of agricultural policy and programme. Again, the visibility of women in petty trading gives the false impression that their enterprises are successful and acknowledged. However, a recent assessment of women's enterprises shows that the constraints to their ability to acquire capital, namely poor access to credit, information, appropriate technology, lack of technical skills, and poor organizational and accounting skills are congenial problems at all levels of women's businesses.[62] It therefore follows that real Affirmative Action in favour of both women participation in policy and decision-making and in provision of capital incentives to them is needed to enable them plan and manage their enterprises.

There are many other windows of the Policy[63] through which discussions on the empowerment of women can be carried out. But suffice the above to be very important areas through which Affirmative Action principle can be employed for better and adequate representation of women in integral national and self-development. This adequate representation is particularly needed not only for restructuring the economic and socio-political institutions to ensure social equity and economic growth, but also for strengthening the traditional commitment to the stability of the family and society together with the complementarity of gender roles.

Challenges

For the successful implementation of Affirmative Action for women empowerment and national development, certain challenges which may constitute veritable obstacles have to be surmounted.

61. *See Article 10.1.2 of the policy.*
62. *See Article 11.1.2 of the policy.*
63. *Other windows of the policy include health, science and technology, environment, legal reforms / legislative protection, media relations and publicity.*

Lack of Proper Qualification

Does application of Affirmative Action mean preferring women to men in, say, employment, admission, etc regardless of whether the women are qualified therefore or not? If that is Affirmative Action, then that principle would certainly constitute a clog in the wheel of progress. It is our candid submission that Affirmative Action is not intended to simply fill quotas without regard to minimum qualification. It would rather mean preferring females to males where both are qualified, and which practice must be temporary and restricted to certain reasonable allotment. The intention of the policy makers must also be seen to be genuine. Far from signaling a spirit of revenge, Affirmative Action should be as a result of compelling national interest which may be for the sake of national integration and in favour of furnishing all with a sense of belonging.

Thus, while many women are gradually coming up the educational and other ladders, it is still true that many Nigerian women are not yet qualified for certain socio-economic and political positions. The implication is that women inasmuch as they are desirous to be beneficiaries of Affirmative Action strategy should struggle to get the minimum qualification requirements necessary for relevant key posts. Real and quality education of women is therefore a *sine qua non*.

Socio-Cultural and Religious Factors

Affirmative Action implementation would really have to contend with the all-too patriarchal bravado associated with many Nigerian cultures and religions. Nigeria is a society where women are still regarded as the weaker and inferior sex whose tasks are not more than nurturant, caring and supportive, and therefore cannot be expected to aspire to positions of politics, decision making and leadership generally. These considered, there is no gainsaying that the male-dominated society of Nigeria will not readily subject itself under feminine rule. Customs and traditions are always there to support this attitude.

Furthermore, some Nigerian traditional *ethos* have numerous myths of origin which hold that actions of women have been held responsible for failures of men and, at times, for the breach of relation between men

and their gods. Modeled after the "Eve in the Bible, the Greek disaster of Pandora, and the mythical Dinka lady who mortally offended her divinity (Nhialic) by hitting him in the eye with her pestle",[64] Nigerian women are still viewed by many men as objects of disaster. It has only to be expected that this type of attitude should translate into matters socio-economic and political. Finally, Islam which is a major religion in Nigeria today is strong in the belief of the Koranic stipulation that "men are in charge of women".[65] Prophet Mohammed similarly declared that "verily, that nation would not prosper which hands over the reigns of its government to a woman".[66] All these go to show that even if Affirmative Action applies, some areas of its desired implementation would severely be met with stiff opposition and difficulty.

Legal Constraints/ Non Domestication of International Laws

Affirmative Action in favour of women empowerment would not immediately be read into the 1999 Constitution. It would need much jurisprudential analysis, perhaps by an activist judiciary, to source the validity of the principle from the Constitution. Such provisions on the federal character principle and equal opportunity clauses (which provisions are situated within the non-justiceable Chapter II on the fundamental objectives and directive principles of state policy) are not immediately explicit on the legitimacy of Affirmative Action if implemented. Therefore, the unclear provision of the grundnorm with regard to our subject matter would seem to be an *obex* to any valid implementation of the principle especially in favour of women.

Moreover, Nigerian jurisprudence has an avowed bias to the dualistic approach to international law instruments. Section 12 of the 1999 Constitution requires every international treaty, convention, protocols, declarations, etc to be first domesticated, incorporated or re-enacted into a domestic law for it to have a binding effect. So that in spite of the natural law principle of *'pacta sunt servanda'*, which imposes an obligation on a state party that signed and ratified an agreement to perform same, positivistic constitutionalism in Nigeria would still

64. *A. P. Cheater, Social Anthropology, London: Routledge, 1989, p. 241.*
65. *Koran 4: 34.*
66. *Bukhari al-Sahih.*

regard international law as a toothless bull dog unless it becomes part of her *corpus juris*. Yet, most of the international human right instruments which would have founded the valid implementation of Affirmative Action principle suffer the fate of this dualistic frame-work.

Poor Awareness and Shortage of Women Activists

Many Nigerian women are unaware, apathetic or indifferent to the situations that keep them down. No wonder some women are even antagonistic towards fellow women politicians. Sometimes, some tend to have low aspirations thereby perpetuating their disadvantages. For instance, as observed by Broom and Selznick, "even though many young women have the ability to be physicians, they do not aspire beyond becoming nurses".[67] This attitude would naturally lead to shortage of women activists. Scarcely does Nigeria have women equivalents of Gani Fawehinmi, Bala Usman, Femi Falana, Fela Anikulapokuti, etc. It is hard to come by women who take serious and pronounced stand on important national issues. Yet, Affirmative Action in favour of women would thrive only where this kind of defeatist mindset is removed.

Recommendations Legislative and Constitutional Review

Explicit laws legalizing affirmation action need to be made. To circumvent any issue of inconsistency of such laws with the constitution and the attendant implications there is also need for constitutional review in which use of affirmative action strategy will be constitutionally affirmed. Such a provision would cover the interest of not only women but also all other minority groups which have been the victims of entrenched past discrimination.

Education and Literacy

Education is the bedrock or the substructure of any genuine national and self-development. So if women are to get to the desired socio-political and economic positions in Nigeria, they should go into education especially in those disciplinary areas in which hey are marginally represented. Law, medicine, science and technology, etc are some of such important areas which hold the key to national progress.

67. *L. Broom & P. Selznick, Op. Cit., p. 116.*

Therefore, more funds albeit, by way of affirmative action shall be invested to improve the quality of education for women.

Socio – Cultural Change

The socio-cultural denigration of women as inferior sex should consider a change of attitude. Some argue that nature and culture have made women inferior. Yes, man is created by culture; but is equally true that man is a creator of culture for which human civilization that emphasizes respect for human rights and the dignity of the human person, male and female, should demand a process of cultural change.

Consciousness Raising and Unity among Women Folk

Awareness should be awakened in women that they have a lot of potentials in them. Let them too not think that their status is so low that they have less aspiration. Again, the saying "united we stand, divided we fall" must apply to women if they want to be dully represented in the socio-economic and political arena.

Gender Analysis and Need for Desegregated Data

Gender analysis is a systematic process of identifying the differences that exist in and examining the related needs, roles, status, positions and privileges of men and women. It assesses the differential impact of proposed or existing policies, programmes and legislation on both sexes. Gender analysis is based on the premise that gender is a critical variable in the development process which major parameters include economic growth, social equity, and social well-being. Proper gender analysis and its importance for real development will not be easy to come by without reliable data for planning. In relation to women empowerment, absence of a feminist framework of analysis would cloud the interpretation of reality to the extent that women's needs will remain largely unknown and unplanned for. For good knowledge of the relevant areas where Affirmative Action would be applied, the Ministry of Women Affairs *et al* would need to establish a data bank and regularly develop monitoring indicators for women in development programmes.

Necessity for Gender Budgeting

There is a need for gender budgeting which is a systematic approach to ensure that monetary allocations in all sectors of any system are implemented to the extent that equality of sexes are maintained. In relation to women who had been victims of subjugation and discrimination, the budgetary process both in the federal and state levels must take this into consideration by special allocation to enhance the training of and other incentives to women.

7. Conclusion

As Nigeria sees democracy and its ideals as a panacea to the mosaic of its socio-economic and political problems, one would expect that every segment of the society including women should be encouraged to participate in it. True democracy cannot of course be divorced from the integral liberation of women from the several clutches of their lot. Hence, it is no thanks to any society which by commission or omission is bogged down by archaic customs and traditions that inhibit or relegate women to the background. Same goes for anyone that fails to identify and harness their productive and leadership potentials. Democratic nations such as Britain, Israel and India that, at one time or the other, had women political leaders, came out better for it. Recent experience in Nigeria has also shown that there is a relative sanity and sincerity in some of those few areas where women pilot the affairs. Even if we can multiply this situation through Affirmative Action by allocation of socio-political and economic roles to qualified women, so be it. After all, governments exist to promote and protect the interest of all their citizens including the weak, the infirm, the handicapped and the minor. True, Affirmative Action has produced some unintended side effects such as depriving a few people of their deserved rewards. Yet, this is unavoidable in any social policy. This is quite poignant since in any process of change, there are always gainers and losers. Hence, Affirmative Action is really a practical tool for the mainstreaming of women into the sectorial areas of national development. It is only when the disadvantaged such as women catch up with what was lost that a real sense will be made of the equal opportunity clauses of the 1999 Constitution.