

**THE RIGHT TO FREEDOM FROM DISCRIMINATION ON GROUNDS OF
GENDER, ETHNICITY AND INDIGENESHIP: THE NIGERIAN EXPERIENCE**

BY

**Andrew Onyekachukwu UMEH
LAW1504424**

**FACULTY OF LAW
UNIVERSITY OF BENIN
BENIN CITY, NIGERIA**

JUNE, 2021

**THE RIGHT TO FREEDOM FROM DISCRIMINATION ON GROUNDS OF
GENDER, ETHNICITY AND INDIGENESHIP: THE NIGERIAN EXPERIENCE**

BY

Andrew Onyekachukwu UMEH

LAW1504424

**A LONG ESSAY WRITTEN IN THE FACULTY OF LAW IN PARTIAL
FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF BACHELOR OF
LAWS (LL.B) OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA**

JUNE, 2021

APPROVAL

We certify that the project was completed by **Andrew Onyekachukwu UMEH** with Matriculation Number **LAW1504424** in partial fulfilment of requirements for the award of the degree of Bachelor of Laws (LL.B).

Mrs. Sonia Akinyelu

Project Supervisor

Signature & Date

Dr. Daniel T. Achi

Project Coordinator

Signature & Date

Professor Violet O. Aigbokhaevbo

Dean, Faculty of Law

Signature & Date

CERTIFICATION

I, **Andrew Onyekachukwu UMEH**, with Matriculation Number: **LAW1504424**, hereby certify that apart from references to other people's work which have been duly certified, the entire work is a product of my personal research and that this project work has neither in whole or in part been presented for another degree elsewhere.

Andrew Onyekachukwu UMEH

DEDICATION

I dedicate this work to the Almighty God, the maintainer of my lot. To Mrs. Obiageli Umeh, Honourable Justice Akon Bassey Ikpeme, the Cross River state Chief Judge and all who despite different levels of discrimination have thrived in our society.

ACKNOWLEDGEMENT

At this remarkable phase of my life, I would like to appreciate everyone who has played instrumental roles to the attainment of this milestone in my LL. B. Journey. I'm grateful to God, the maintainer of my lot, for goodly heritage.

I appreciate family and friends. My parents, Venerable John Umeh and mummy, Mrs. Bridget Umeh, my support system, for all she was and became more during these few years. My brother, Emma, my natural underwriter; my sister, Amara, for all the love. Sir Professor Joseph & Lady (Professor) Ebele Umeh, for the gift of them to my life from childhood. Friends- Paul, Elochukwu, Alero, Akinyemi, Ufuoma, Esohe in the good times and challenging moments, for all the encouragements.

My project supervisor, Mrs. S. Akinyelu, for the guidance and giving good reasons to make better efforts. I also appreciate Honourable Justice Victor Offiong of the Cross River State Judiciary, a former Professor of Law at the University of Calabar, for the hosting and his contributions even from busy schedules. Dr. Gabriel Arishe, Dr. A.O Ewere, Prof. EmekaChianu and the host of lecturers in the Faculty of law, for the mouldings, for the lessons.

To all other persons whose names may not be here mentioned, but made useful contributions to this goal, roommates, Fellowship members, Congressmen, I say thank you, you are all dear to my heart.

TABLE OF CASES

Adejumo & 2 Ors v. Ayantegbe [1989] 3 NWLR (110) 417	-	-	-	-	-	-	-	45
Akinbuwa v. Akinbuwa [1998] 9 NWLR (564) 100	-	-	-	-	-	-	-	32
AmoduTajani v. Secretary of Southern Nigeria.[1912] 2 AC 399	-	-	-	-	-	-	-	46
Aniekwe v. Nweke [2014] 9 NWLR (1412) 393	-	-	-	-	-	-	-	30
Animashaun v. Onyekwuluje [2006] 340 all FWLR (1152)	-	-	-	-	-	-	-	43
Awure v. Iledu [2008] 18 WRN 187	-	-	-	-	-	-	-	42
Bradwell v. United States [1873]83 U.S., 130	-	-	-	-	-	-	-	37
Brown v. Board of Education 347 U.S. 483	-	-	-	-	-	-	-	86,87
Donughue v. Stevenson [1932] AC 562	-	-	-	-	-	-	-	2
Ejiamike v. Ejiamike [1972] 2 E.C.S.L.R. 11 VOL.2.P.43	-	-	-	-	-	-	-	32
Ekpendu v. Erika [1959] 4 F.S.C. 29	-	-	-	-	-	-	-	43
Elizabeth Badejo v. Minister of Education [1996] 9-10 SCNJ 51	-	-	-	-	-	-	-	19, 80, 95
Enderby v. Frenchay Health Authority [1994] 1 All ER 495; [1994] ICR 112, ECJ	-	-	-	-	-	-	-	36
Hyde v. Hyde1 P &D. 130	-	-	-	-	-	-	-	82
Lebile v. Rev.Preshec&ors [2003] 3 NSCQR @ 279	-	-	-	-	-	-	-	42
Legal Defence and Assisted Project (LEPAD) GTE & LTD v. Federal Ministry of Education &AnorSUIT NO: FHC/ABJ/ CS/978/15	-	-	-	-	-	-	-	36
Lewis v. Bankole[1901] 1 NLR 82	-	-	-	-	-	-	-	34, 42
Mojekwu v. Mojekwu [1997] 7 NWLR (283) 1	-	-	-	-	-	-	-	33
Nezianya&anor v. Okagbue [1963] 1 All NLR p.52	-	-	-	-	-	-	-	32
Olowuv.Olowu [1985] 1 NWLR (13) 372	-	-	-	-	-	-	-	39, 42, 44
Plessy v. Ferguson [1896] 163 U.S.537	-	-	-	-	-	-	-	82
Salubi v. Nwariaku [2003] 7 NWLR (Pt.819) 426	-	-	-	-	-	-	-	30

SERAP V, Federal Governmnet of Nigeria and Universal Basic Education Commission. Suit Number ECW/CCJ/APP/0808. 27 th October 2009	-	-	-	-	-	-	21
Taiwo v. Lawani [1961] ANLR 773	-	-	-	-	-	-	30
Ugboma v. Morah [1940] 15 NLR 78	-	-	-	-	-	-	33
Ukejev.Ukeje [2014] 11 NWLR (1418) 384	-	-	-	-	-	-	30
Unity Dow v. Attorney General Botswana	-	-	-	-	-	-	34
Usiobaifo v. Usiobaifo [2005] 3 NWLR (913) 665	-	-	-	-	-	-	43
Yinusa v. Adebusokun 1968] NNLR 97	-	-	-	-	-	-	44

TABLE OF STATUTES

Nigerian Statutes

Administration of Criminal Justice Act (ACJA) 2015

Anambra State Disability Rights Law (ASDR) 2018

Discrimination Against Persons with Disabilities Law 2019

Land Use Act 1978. L5, Laws of Federation of Nigeria, 2004

Marriage Act 1970. M6 Laws of the Federation of Nigeria, 2004

The Constitution of the Federal Republic of Nigeria, CFRN 1999 (as Amended)

The Federal Character Commission (Establishment, Etc) Act, Cap F7, Laws of the Federation of Nigeria, 2004

The National Health Insurance Act 2014

The Penal Code Act. Cap 345, Laws of the Federation of Nigeria 1990

The Police Act. Cap P19 Laws of the Federation of Nigeria, 2004

The Universal Basic Education Act 2004

Foreign and International Statutes

African Charter on Human and Peoples' Right (ACHPR) 1983

American Civil Rights Act, 1957

American Civil Rights Act, 1964

Constitution of the Kingdom of the Netherlands

Constitution of the United States of America

Constitution of the United States of America, 1776 (19th Amendment, 1920.)

Convention for the Elimination of all forms of Discrimination Against Women (CEDAW)
1979

Covenant on Economic Social and Cultural Rights

Equality Act of England 2010

Millennium Development Goals (M.D.Gs)

The Human Rights Charter of the United Nations 1945

The Universal Declaration of Human Rights (UDHR) 1948

United Nations Convention on the Rights of Persons with Disabilities 2019

United States of America Fair Housing Act 1968

ABBREVIATIONS

A.C	Appeal Cases
All ER	All England Report
All NLR	All Nigeria Law Report
E.C.S.L.R.	East Central State Law Report
F.S.C	Federal Supreme Court Reports
FWLR	Federal Weekly Law Report
ICR	Industrial Cases Reports
NSCQR	Nigeria Supreme Court Quarterly Law Reports
NWLR	Nigerian Weekly Law Report
SCNJ	Supreme Court of Nigeria Judgement
U.S.	United States Law Reports
WRN	Western Region of Nigeria Law Reports

TABLE OF CONTENTS

Title page	-	-	-	-	-	-	-	-	-	-	ii
Certification	-	-	-	-	-	-	-	-	-	-	iii
Approval	-	-	-	-	-	-	-	-	-	-	iv
Dedication	-	-	-	-	-	-	-	-	-	-	v
Acknowledgement	-	-	-	-	-	-	-	-	-	-	vi
Table of Cases-	-	-	-	-	-	-	-	-	-	-	vii
Table of Statutes	-	-	-	-	-	-	-	-	-	-	ix
List of Abbreviations	-	-	-	-	-	-	-	-	-	-	xi
Table of Contents	-	-	-	-	-	-	-	-	-	-	xii
Abstract	-	-	-	-	-	-	-	-	-	-	xiv

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Definition of Terms	-	-	-	-	-	-	-	-	-	-	1
1.1 (a) Right	-	-	-	-	-	-	-	-	-	-	3
1.1 (b) Freedom	-	-	-	-	-	-	-	-	-	-	3
1.1 (c) Discrimination-	-	-	-	-	-	-	-	-	-	-	4
1.2 What Discrimination is not	-	-	-	-	-	-	-	-	-	-	7
1.3 Right to Freedom from Discrimination	-	-	-	-	-	-	-	-	-	-	10
1.4 Right to Freedom from Discrimination World over	-	-	-	-	-	-	-	-	-	-	10
1.5 The Right to Freedom from Discrimination in Nigeria	-	-	-	-	-	-	-	-	-	-	14
1.6 The Value of the Right to Freedom from Discrimination in Nigeria Today	-	-	-	-	-	-	-	-	-	-	16
1.7. The Ordeal of Honourable Justice Akon Bassey Ikpeme, Cross River State Chief Judge as case study	-	-	-	-	-	-	-	-	-	-	20

CHAPTER TWO: GENDER-BASED DISCRIMINATION

2.1 The Meaning of Discrimination based on Gender	-	-	-	-	-	-	-	-	-	-	25
2.2 Constitutional and other International Provisions against Gender Discrimination-	-	-	-	-	-	-	-	-	-	-	26
2.3 Women as the Centre Piece of Gender Discrimination	-	-	-	-	-	-	-	-	-	-	28
2.4 Manifestation of Gender Based Female Discrimination	-	-	-	-	-	-	-	-	-	-	29
2.5 Jobs and Work Place Gender Discrimination	-	-	-	-	-	-	-	-	-	-	35

CHAPTER THREE: DISCRIMINATION BASED ON ETHNICITY

3.1 Statutory and Constitutional Framework in Nigeria	-	-	-	-	38
3.2 Extent of practice of Ethnic Discrimination as a Threat to National Objectives	-				39
3.3 Ownership, Leases and Sales of Land in Communities	-	-	-	-	41
3.4 Community Service and Political Leadership	-	-	-	-	43
3.5 The Farmer- Herder Crisis as a Catalyst to Ethnic Discrimination	-	-			45
3.6 Regional Ethno-Religious Policing Activities: The Sharia Police	-	-			46

CHAPTER FOUR: DISCRIMINATION BASED ON INDIGENESHIP

4.1 The General Concept of Indigenship	-	-	-	-	-	49	
4.2 Nigeria’s Definition of the Concept in law and practice	-	-	-	-	52		
4.3 Implications of Discrimination based on Indigeneship	-	-	-	-	54		
4.4 The Indigene - Settler Question in Nigeria	-	-	-	-	55		
4.5 The Indigene - Settler Question and Citizenship	-	-	-	-	58		
4.6 Formal Requirement of State of Origin in Formal Settings	-	-	-	-	65		
4.7 The Quota System in Nigeria	-	-	-	-	-	68	
4.8 Implications of Interpretations to Section 147, Constitution of the Federal Republic of Nigeria	-	-	-	-	-	-	72

CHAPTER FIVE: A COMPARATIVE ANALYSIS OF NIGERIA AND OTHER CLIMES

5.1 Introduction	-	-	-	-	-	-	-	75
5.2 Gender Discrimination as a Global issue	-	-	-	-	-	-	-	78
5.3 Ethnicity and Indigeneship Discrimination in Nigeria and Other Climes	-							80
5.3.1 ‘Separate but Equal’	-	-	-	-	-	-	-	82

CHAPTER SIX: SUMMARY, RECOMMENDATION AND CONCLUSION

6.1 Summary and Recommendations	-	-	-	-	-	-	-	88
6.2 Conclusion	-	-	-	-	-	-	-	92
Bibliography	-	-	-	-	-	-	-	94

ABSTRACT

The Right to freedom from discrimination is a Fundamental Human Right world over, of which Nigeria is subscribed to observe in her laws as a democratic and civilized state. This freedom from any form of deprivation or stigmatization based on sex, religion, ethnicity, circumstances of birth, political opinion and other such related bases is protected in Nigeria's Constitution, various state provisions and policy documents and International pacts. However, the reality in practice in the country today portrays a wide drift from the provisions of the law in such aspects as political appointments, trade and business ease, work modalities, Farmer-Herder relations and attendant crisis, state of origin, Indigene-Settler question, Quota system practice, and such other manifestations of different levels of discrimination. Also in issue is the contradiction of some state practices and federal policies against the constitution and perhaps, the constitution against itself.

This work employs the primary sources of law and secondary data collection and the methodology of black letter law in examining the value of the Right to freedom from Discrimination based on gender, ethnicity and religion, indigeneship factor in Nigeria today with findings that these rights are virtually just in theory and largely observed in breach, negatively affecting peaceful coexistence and development of the country. It therefore recommends the amendment of constitutional provisions for clarification, redraft of state laws and policy practice documents; compensation and reconciliation over discriminatory practices; punishment and political will to enforce compliance against breach of this right; a National reorientation and improvement on the justice delivery system and indeed general governance system in order to restore confidence to the Nigerian society.

CHAPTER ONE

INTRODUCTION

The chances that a citizen of Nigeria, a foreign resident or a visitor for a few days at worst, within the country will not experience some form of discrimination based on the issue of gender, ethnicity or indigene-ship and other such related issues is slim. It is a fact, though rarely in front burner discuss that we all are vulnerable to one form of discrimination or the other in various classifications and manifestations such as racism, in access and control of resources and opportunities, political and religious persuasions, gender, colour, and such issues world over, as a natural competition instinct for scarce resources and sometimes negative, repulsive behaviour. If it is not a *George Floyd* being snuffed gradually of life by the treacherous knee of a white cops, in the U.S.A.,¹it is an *Honourable Justice Akon Bassey Ikpeme*, being declined confirmation as Chief Judge by her state House of Assembly because she is only married to an indigene of the state and not “originally an indigene” herself.²Gender, religious affiliation, political philosophy, ethnicity, circumstances of birth and many more such reasons are fertile grounds for discrimination in Nigeria today.³

¹ Black American, George Floyd was, in the guise of arrest by Derek Chauvin, a Minneapolis police officer pinned to the ground by his neck at the back of Police Vehicle till he suffocated despite pleas and repeated assertions that he “can’t breathe” on the 20th of May, 2020. Recent report has it that on the 21st April 2021, Derek Chauvin has been convicted for all three counts charge of second degree unintentional murder, second and third degree manslaughter by the U.S Court. Al Jazeera English 21st April, 2021.

² The Cross River State House of Assembly had refused to confirm the nomination by the Governor of the state on the advice of the National Judicial Council(N.J.C) of Hon. Justice Akon Ikpeme as substantive Chief Judge of Cross River State on the grounds that she traces her place of origin to Akwa Ibom State, where her father hails from (although her mother is from Cross River and herself married to a Cross Riverian). She was termed “a security risk” by some members of the House of Assembly. She has later now been confirmed by the House as well as sworn in by the Governor of Cross River after Legal fireworks and intervention by the Nigerian Bar Association (NBA) as well as the National Judicial Council (NJC).

³ Although the Constitution of the Federal Republic of Nigeria 1999 prohibits discrimination on any grounds especially the ones listed in same section. The Fundamental Objectives and Directive Principles of State Policy in Chapter 2 of same constitution and the Federal Character commission Act, 1996 among others all provide laws and principles that discourage discrimination.

However, *Lord Atkin* in his *Neighbour Principle* expounded in the celebrated case of *Donoghue v. Stevenson*⁴, admonishes everyone to do or refrain from doing acts that are detrimental to the wellbeing and dignity of our neighbour- Any person in proximity to be affected by our actions and inactions. The Right to Freedom from discrimination is guaranteed in Nigeria's constitution⁵, United Nations Charter on Human Rights,⁶ International policy pacts like the Sustainable Development Goals (S.D.Gs)⁷ and other relevant laws .What are the implications of these rights, if they really exist in Nigeria? To what extent are they observed and complied with to ensure minimal infringements? What obtains in other climes? The work inquires whether our legislations and its performance and the practice in Nigerian society suffice to guarantee freedom from discrimination based on gender, ethnicity, and indigene-ship .It examines discrimination on the above basis. These issues and their concerns make up the discus in this work as well as proffered solutions.

1.1 Definition of Terms

1.1.(a) Right

A right is generally referred as a legally supported claim. Black's Law Dictionary⁸ posits it to be something that is due to a person by just claim, legal guarantee or moral principle. The dictionary portrays it in the light of a breach of duty that infringes one's right-right here being

⁴ [1932] AC 562

⁵ Section 42 Constitution of the Federal Republic of Nigeria (CFRN) 1999 provides squarely against various forms of discrimination. Also the, Fundamental Rights as contained in Sections 34- 41 providing respectively on the Rights to Dignity of Human Person; personal liberty; fair hearing; private and family life; freedom of thought, conscience and religion; freedom of expression and the press; peaceful assembly and association and; freedom of movement, are also complementary provisions associated with this right against discrimination as well as the right to acquire and own immoveable property anywhere in Nigeria contained in section 43 Of the constitution.

⁶ The United Nations Human Rights Charter which was drafted 14th August, 1941; signed into law 26th June 1945 and became effective 24th October, 1945 in San Francisco, California, U.S.A.

⁷ Formerly Millennium Development Goals (M.D.Gs) set up in year 2000 with 10 year plan that elapsed in 2010 and the extant SDGs billed to be achieved by 2030. Goal 9 of the S.D.Gs centres on the Rights against discrimination.

⁸ 8th Edition, 2004.

a legally enforceable claim that inputs duty so that another will do or not do certain things; a recognised and protected interest, the violation of which is a wrong. *Wesley Newcomb Hohfeld*⁹ provided his idea on rights as one's affirmative claim against another. That is to say, an enforceable claim for performance, action or forbearance of another.

It is distillable that right could be called in other terms as claim; recognised and protected interest by the law, bestowed on a person for, which violation is a wrong and action lies. This must be so on the grounds that the state by its laws recognises such claim. A right is different from a privilege which must be earned, unlike rights, which are naturally imputed.

1.1 (b) Freedom

Freedom entails liberty, unrestricted choice to do or not do, particular things. The word comes from the root word 'free' which connotes absence of constraint or state of being unencumbered or restrained. Black's Law Dictionary describes the concept as the state of being free or liberated. The word means different things to different people and situations, as well as context of usage. Freedom for a prisoner will be a state pardon or completion of jail term which operates to discharge him from lawful captivity. Freedom for a pressman entails liberty in carrying out his lawful duty without restraint. For a citizen, freedom will mean non imputation of any encumbrances or constraint on his person on any basis. Freedom is best appreciated in the context of prior regime of encumbrances or constraint whether lawful or not. The 16th-19th century Trans-Atlantic slave trade for example and slave emancipation that followed thereafter, vividly highlights what freedom entails¹⁰.

⁹ In his book: *Some Fundamental Legal Conceptions as Applied in Jural Reasoning*.

¹⁰ Approximately from 1526 to 1867, some 12.5 million slaves were shipped from Africa to Europe and America such that by 1825, one quarter of the U.S. population consisted people of African descent. *Historical Context: Facts about the Slave Trade and Slavery* by Steven Mintz.

1.1(c) Discrimination

One discriminates when he appreciates and actually applies different standards to different persons that ordinarily are on the same or almost the same standing in a particular situation. These grounds may be perceived or real. The Hitler regime with the theory of supremacy of the German race over all other human races, especially the Jewish race is an example of perceived and subjective grounds for discrimination. *Oxford Advanced Learners' Dictionary* describes it as the unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, sex, or disability. It also posits that the recognition and understanding of the difference between one thing and another is discrimination, which in our focus will be a negative and offensive understanding or recognition of differences between people. Such words as prejudice, disdain, distinction, segregation, spite, partiality, segregation are associated with the concept. *Cobuild Advanced English Dictionary*¹¹ posits it is the practice of treating one person or group of people less fairly or less well than other people or groups. It is the act of making unjustified distinctions between human beings, based on the groups, classes, or categories to which they are perceived to belong. People may be discriminated against on the basis of race, gender, age, religion, sexual orientation, economic stratification and numerous other classes that may arise in various occasions and situations according to subjective biases and inclinations.

Black's law Dictionary describes the concept as differential treatment, especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured. It also postulated it in the context of the effect of a law or established practice that confers privilege on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap.

¹¹ HarperCollins Publishers, 15th Edition 2015.

*Human Rights Committee*¹², defined discrimination broadly as:

“Any distinction, exclusion, restriction, or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on equal footing, of rights and freedom”.

With the latest and even more encompassing definition of the concepts enunciated by the *United Nations Convention on the Rights of Persons with Disabilities*¹³ under Article 2 reads that ‘*discrimination (on the basis of disability) means any distinction, exclusion or restriction (on the basis of disability) which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms in the political, economic and social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation*’. It can be gleaned from the definitions that any action with intent to impair another’s human rights on any grounds whatsoever amounts to discrimination.

Under civil law, discrimination is described as unfair or unequal treatment of an individual (or group) based on certain characteristics, including age, disability or ethnicity. It occurs when someone is treated less favourably due to certain attributes, which are sometimes legally protected. More often than not, these treatments are openly antagonistic, for instance, not getting a promotion because one is pregnant. This is peculiar to the female gender who, usually are disadvantaged in the better part of many policies including employment laws and practice. The recent incident of the Ondo female Police corporal, *Olajide Omolola*, who was relieved of her appointment by the Nigerian Police Authorities because she got pregnant out of wedlock¹⁴, while her male counterparts in the force go unpunished for same ‘offence’ under the *Police Act*. The language of the sack order had every flavour of undue focus on the female officers both the one sacked and other officers in the force. It went on to specifically instruct that ‘you are to lecture women officers’. The sack order read thus:

¹² General Comments ,Number 18,Article 40,paragraph 4.

¹³ United Nations CRPD 2019.

¹⁴ The Police in a wireless message with reference number CJ:4161/EKS/IY/Vol.2/236, DTO:181330/01/2021 from the Department of Finance and Administration in Ado Ekiti addressed to Divisional Police Officer Iye Ekiti ordered her sack. Section 127 Police Act makes it mandatory for a female officer to notify their superior in writing of their intention to get married, under which the proposed spouse is scrutinized by the said superiors.

*'Section 127 of the Police Act and Regulations against women police getting pregnant before marriage; W/PC(woman corporal) Olajide Omolola passed out of Police Training School on 24/04/2020 attached to yours, contravened above provisions. She stands dismissed from the Force. De-kit her. Retrieve police documents in her possession with immediate effect. O/C CFO Ekiti only. You are to relay signal to IPPIS Abuja for the stoppage of her salary with immediate effect. DECOMPOLS (Deputy Commissioners of Police)/ACPOLS(Assistant Commissioners of Police)/HODs/DPOs Ekiti only. You are to lecture women police. Treat as very urgent.'*¹⁵

The order like any other such orders that may be issued in respect of such repeat of events in Nigeria in the guise of ensuring the maintenance of public morality is terribly discriminatory against the female gender, no such provision for their male counterparts disciplinary action in the act. This posture only reflects what had been long obtainable in the civilizations of men, for example in ancient Jewish culture.¹⁶

Discrimination occurs when a person is unable to enjoy his or her human rights or other legal rights on an equal basis with others because of an unjustified distinction made in policy, law or treatment.¹⁷ Discrimination also occurs when people with a particular attribute are in more need of particular resources in greater number, but marching attention in adequate proportion is not paid to the same. For example, women peculiar need for sanitary pads, mother- child health insurance,¹⁸ protection from societal vices like forceful rape and molestation.

Discrimination is identified in four (4) categories under the *Equality Act*¹⁹ which are:

1. Direct discrimination.
2. Indirect discrimination.
3. Harassment .
4. Victimization.

¹⁵ Punch Newspaper, 27th January 2021: Outrage as police sack single female cop for getting pregnant.

¹⁶ The story if the woman caught in adultery in the Jewish Bible Times recorded in John 8: 3- 11 depicts the culture at the time.

¹⁷<https://www.amnesty.org> Discrimination@2021 Amnesty International. Accessed 25th April, 2021.

¹⁸ Especially to diminish the high mother/child mortality rate prevalent in the 3rd world developing countries of Africa.

¹⁹ Equality Act of England 2010.

While direct discrimination is clearly explicitly perpetrated, the requirement of proof by women only of certain level of education as a prerequisite for electoral participation for example; indirect discrimination is usually unintended or a consequence of direct discrimination. Harassment is the conveyance of negative behaviour towards a party, which operates to humiliate, intimidate, or belittle his person, violate his dignity and render inconducive his social environment. Such actions as bullying, nicknaming, gossiping or asking awkward and inappropriate questions, are all different examples of harassment. Victimization entails becoming subject of advanced degree of discrimination because of a prior protest or resistance, of ordinary manifestations of discrimination. Such situations as being conspicuously left out or ignored or being made redundant in a gathering or at workplace depicts this category of discrimination.

1.1 (d) Gender

Gender refers to either of the two sexes, male or female.²⁰ It is the distinction of human beings by sociologically constructed categories into masculinity and femininity and the range of characteristics pertaining to and differentiating between them. This is more encompassing than biological classification into male and female by sex. As discrimination is the prejudicial distinction or unjust treatment, it will therefore amount to discrimination based on gender when the sociological classification of human beings into male and female is the ground upon which a person or persons are prejudicially treated or distinction, unjustly created.

Modern English word 'gender' comes from middle English '*gender, gendre*' a loan word from Anglo-Norman and Middle French '*gendre*' which in turn, came from latin '*genus*'. Both words mean 'kind, type or sort'.

Gender is the state of being male or female in relation to the social and cultural roles that are considered appropriate for men and women. Gender discrimination is also gender bias, gender bias, gender binary, gender dysphoria, gender gap.²¹

²⁰ Although recent developments have proven that there are other variations like non binary, queer and more up to 52 in number.

²¹ 12th Edition Collins English Dictionary.

1.1 (e) Ethnicity

Ethnicity describes the common characteristics of a group of people, especially regarding ancestry, culture, language or national experiences, a race with common ancestry. Oxford Advanced Learners' Dictionary,²² posits it as the fact of belonging to a particular race or culture. A grouping of people who identify with each other on the basis of shared attributes that distinguish them from other groups. Religion entails belief system involving. Black's Law Dictionary defines religion as a system of faith and worship usually involving belief in a supreme being and usually containing a moral or ethical code, especially such a system practised by a particular church, sect or denomination.

1.1 (f) Indigeneship

Indigeneship comes from the root word 'indigene' which means a native or indigenous person when used in relation to a given socio-culturally and politically organised area. Other words as aborigine, local are associated similar words.

Indigeneship is the status of being an indigene, a native status. Indigeneity, indigenisation are associated concepts. It is a natural link between a person and a geographical location- his ancestral home where he traces his roots through a blood lineage and genealogy that puts him in contact with his kin and kindred.²³ Although the Nigerian law, allows its citizen to live and work or carry on economic activity, as well as own property, in any part of the country they choose,²⁴ the reality in practice in Nigeria shows that diverse means of identification and socio-political, as well as socio-cultural standards are employed by acclaimed 'aborigines' of a given place in the application of the implication of these laws.

²² 10th edition 2004.

²³ Joseph Dangme Rinyom: Indigeneship, Citizenship and the Lost Nigerianship, An Unpopular Essay.

²⁴ Constitution of the Federal Republic of Nigeria, CFRN 1999, Sections 41 and 43.

An indigene of a given place, may be categorised in cultural affiliations, an ethnic group. For example, a *Bini*²⁵ indigene entails one who traces his ancestral home through blood lineage and parents to the Benin kingdom or a Scottish aborigine, who identifies with the ancestry of the Scott in the United Kingdom. It could be also on a socio political basis. Such a *Bini* man in our example above can identify as a south southerner or an Edo state indigene on a state basis in Nigeria.

1.2. What Discrimination is not

With an idea on what discrimination entails, we may now necessarily differentiate situations that ordinarily appear to be discrimination in manifestation but actually are distinguishable from the concept. That is to say, situations where a claim, on discrimination does not arise. The recognition that two things or situations are not equal or on same pedestal and treating them accordingly, does not amount to discrimination. The Human Rights Committee has observed that *'not every differentiated treatment will constitute discrimination if the criteria of such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant'*. In situations where the law says so; or where one can reasonably distinguish differences; or where there is a necessity, discrimination will not arise.

Although the difference between discrimination and differentiation is a thin line (which people argue has grossly faded as an attempt to distinguish both concepts may appear at times, to be attempt to justify discrimination), this distinction must however be reasonable, objective, and apparent to a careful observer and ultimately based on human rights laws for validation, else they glide into discrimination squarely, but in disguise. The ever tugging question of what is fair and reasonable? And who determines it and by what authority? These questions will be answered by the provision of the law, so that arbitrary or unregulated application of a

²⁵ The name of the major ethnic group found in Edo state, South South Nigeria.

‘reasonable man’s test’ is not used to perpetrate discrimination. For example, in the Freedom of religion, thought and conscience, provided under Section 38(1)(2) of Nigeria’s constitution²⁶, a religious community is not prevented from providing its religious instructions for pupils of that community or denomination in a place of education it wholly owns and maintains as provided under section 38(3). Therefore, a Muslim student in a Catholic school for example, will not succeed in an action based on the right to freedom from discrimination where ‘Catholic doctrine’ is thought as a subject taught as a subject in same school. He can only apply his right not to be forced to attend such lessons under section 38(2) and not that such classes are discriminatory against him, because the law has provided for that under section 38(2) of the constitution.

Moreover, the definition of discrimination includes the fact that the prejudicial treatment is applied to people on the same pedestal, where no reasonable distinction can be found. It therefore implies it will not amount to discrimination when people who are not on the same pedestal are given different standards of treatment or a reasonable distinction is existent. Where, for example, a particular set of people are employed on same day having different job descriptions with different qualifications and years of study while in school, a difference in their pay and allowances will not amount to discrimination as clear distinctions, one from another, can be gleaned on several grounds. The *Universal Declaration of Human Rights*(UDHR)²⁷ declares ‘Equal pay for Equal work’ done among other provisions and not otherwise. However, this does not debar an employer who may decide to gratuitously pay extra to some employees who he favours, but only after he has paid a fair and agreed some to all.²⁸

²⁶ Constitution of Federal Republic of Nigeria, CFRN 1999.

²⁷ In Article 23 of the Declaration.

²⁸ The Holy book in Matthew 20: 1-15 in the Parable of the Vineyard labourers. Some hired labourers had protested on the basis of accusation of unfair wages levelled on the owner of the vineyard when he decided to

Furthermore, where there is a necessity, backed usually by law, for the achievement of the common good of society, or *in the interest of public defence, public safety, public order, public morality or public health*²⁹ seemingly discriminatory practice may turn out not to so be. The minimum height requirement, among others is placed as entry qualification for military service or entry into the National Basketball team, which ordinarily is seemly discriminatory on shorter persons who do not naturally clinch that height benchmark, but is necessary for optimum results in the stated national objectives for security and sports development. Section 42(3) CFRN 1999 contains this exception thus:

*Nothing in subsection (1) of this shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as member of the armed forces of the Federation or member of the Nigeria Police Force or to an office in the service of a body, corporate established directly by any law in force in Nigeria*³⁰

1.3. Right to Freedom from Discrimination

Going by the definition of ‘right’ in the light of a legally enforceable claim; Freedom, as a non imputation of any restrictions or encumbrances and; Discrimination as the prejudicial or differential treatment of persons on the bases of race, gender, political views, and the like; a right to freedom from discrimination, therefore amounts in juxtaposition, to mean a legally backed claim against the imputation of any prejudicial or differential treatments on a person based on such factors as race, sex, colour, creed, physical appearance, disability, economic status, level of education or other such bases. It is a lawful claim against any form of segregation, partiality or distinction on a party’s person based on such factors or any other undue distinguishing factor. These rights (to freedom from discrimination) are both natural human as well as civil rights. They are natural because they accrue automatically, to all

pay same amount to workers he employed at the beginning of the day to workers employed at different later hours for a day’s job. Justification is rendered in that he contracted separately and with agreement, with each set of workers to pay them fairly for their job.

²⁹ Constitution of the Federal Republic of Nigeria, (CFRN) 1999, Section 45 (1) (a).

³⁰ Underlined emphasis mine.

humans as universal, fundamental, and inalienable in tandem with natural law³¹ and inherently entitled, simply because a person is a human being; and civil, because they are legally re-enacted in various state constitutions and international conventions, as citizens' rights.³²

Right to Freedom from Discrimination is immunity from discrimination on the basis of race or sex or nationality or religion or age; guaranteed by law.

1.4. Right to Freedom from Discrimination Globally

Freedom from discrimination is a recognised human right and has, along with other Fundamental Human Rights been evolved for the protection of global citizens of the world and indeed human race from arbitrary use of force and violations by governments; powerful organisations and corporate groups, as well as individuals.

Human right has had quite a timeline. From the *Mosaic Torah*;³³ through the *Magna Carta*³⁴; to the *English Bill of Rights*³⁵; the *United States Bill of Rights*³⁶; the *French*

³¹ Natural law named to be the original influence in the proposition of such concepts as rights, democracy, freedom, and such other concepts in tandem with good reasoning and healthy conscience of man. The works of A.V.Dicey, in this respect provides elaborate examples.

³²The Constitution of the Federal Republic of Nigeria (CFRN) 1999, Chapter 4 for example.

³³ Mosaic Law (539- 334). Technically referred to the five(5) books of Moses, the written torah and the constitution of the Jewish people which included the finer/more elaborate points of the 10 commandments and general principles.

³⁴ (1297 C.E), which subjected the *English King John* to the rule of law and protected rights of the nobles and the church and before long, extended to the populace.

³⁵ (1689), passed on the 16th December, 1689, which forbade inter alia, the British monarch from suspending some civil and political rights without parliament's approval.

³⁶ (1791). The first 10 amendments to the U.S. Constitution, which guaranteed a number of personal freedoms and limited government powers in judicial or other proceedings and certain rights for all citizens including those not specifically mentioned in the constitution .

*Declaration of the Rights of Man and the Citizen*³⁷ and the *Universal Declaration of Human Rights* (UDHR 1948)³⁸. The preamble reads inter alia:

'...whereas, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.

While Article 1, restates the equality and dignity of man; Article 2 provides against discrimination based on race, colour, sex, language, religion, political or other opinion, national, social origin, property, birth or other status. Articles 3, 4, 5, 6, 7, 8 which provisions contain aids of law when there is any form of unfair treatment and indeed the entirety of the UDHR, one way or the other promotes the right to freedom from any form of discrimination. Discrimination in such aspects as personal/private life, relationships, religious and political affiliation, as well as economic and social (ECOSOC) aspects is covered by these provisions.

The United Nations Charter on Human Rights³⁹. The United Nations General Assembly (UNGA) created the Universal Declaration of Human Rights (UDHR). The UDHR was an elaborate adoption of the customary international law reflected in fundamental freedoms and human rights of the UN Charter. Article 2 of the UDHR provided elaborately against any form of discrimination on a person.

The African Charter on Human and Peoples' Right (ACHPR)⁴⁰ is an international but continental human rights instrument intended for the protection and promotion of basic freedoms and human right in the African continent. Like its universal counterpart (the UDHR), the ACHPR 1981, in its preamble upheld the tenets of human rights, including

³⁷ 1789.

³⁸ Declared by the United Nations General Assembly in Paris on the 10th December, 1948. Assembly Resolution 217 A(iii).

³⁹ 1945. Drafted 14th August 1941, signed into law 26th June 1945 and became effective 24th October 1945 in San Francisco, California, United States of America.

⁴⁰ Also known as the Banjul Charter. Adopted on the 27th of June, 1981 and came into force 21st October, 1986.

freedom from discrimination and equality for all human beings. Part 1, Chapter 1, Article 2 provides expressly, for Right to Freedom from discrimination, while Article 3 provides for Right to Equality before the law and Equal protection of the law. Article 5 and 6 provides variously, for right to dignity and respect, legal status recognition, providing against degrading treatment and slavery and liberty against arbitrary arrest. Article 8 instructively, provides for freedom of conscience, liberty of practice and profession of religion'. Article 13 (1) provides for right to free participation in one's country's government, directly or through freely chosen representatives, in accordance with law, while subsection (2) posits instructively, that every citizen shall have the right of equal access to the public service of the country.

Article 15 provides for equitable and satisfactory conditions of work and the equal pay for equal work rule. Article 16 (1) provides right to best attainable physical and mental health, while the state should take measures to protect its people's health, while medical health provisions for the sick is stated under subsection (2).⁴¹ Article 17 (1) provides for a right to education and right to partake in community cultural life in subsection (2). While provisions squarely against women discrimination is provided under Article 18 (3), which the state must ensure against through policies and other state mechanisms.

The right against discrimination is tersely provided in Article 19 which reads thus:

'...all people shall be equal and they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another'. This provision stands against any form of preferential treatment based on gender and ethnicity as well as indigeneship, especially reinforced by the second ambit of same section.

⁴¹ States referred to are those signatory to the treaty.

Other such provisions of law and policy documents with international outlook, providing against discrimination, among other human rights is the *Sustainable Development Goals*(SDGs)⁴², the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) 1979. The SDGs for example, a brain child of the United Nations Department of *Economic and Social Welfare (ECOSOC)* in its *Goal Number 5*, for Gender Equality; Decent work and Economic Growth under *Goal 8*; Reduced Inequality under *Goal 10* all contribute to the discourse against discrimination of any form against persons on any basis.

1.5 The Right to Freedom from Discrimination in Nigeria

Nigeria as a sovereign nation⁴³ recognises its constitution⁴⁴ as supreme and its provisions binding on all authorities and persons throughout the federation under Section 1(1) and in Section 1(3) *'if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall, to the extent of its inconsistency, be void'*⁴⁵. Thus, for a right to freedom from discrimination to accrue, and indeed be enforceable, upon a person and indeed, against every other person, within the territory of the Federal Republic of Nigeria, it must be provided for, in the constitution or under any other law which is not 'inconsistent' with the constitution's provisions.

Thus Section 42 of the Nigerian Constitution⁴⁶ therefore provides for a right to freedom from discrimination and reads thus:

⁴² Formerly Millennium Development Goals(M.D.Gs), set in the year 2000 which target time expired in 2010 and the extant billed to be achieved in 2030 and adopted in september 2015 by the General Assembly of the United Nations.

⁴³ Constitution of the Federal Republic of Nigeria, CFRN 1999, Section 2 (1).

⁴⁴ Constitution of the Federal Republic of Nigeria 1999.

⁴⁵ Constitution of the Federal Republic of Nigeria, CFRN 1999, Section 1(3).

⁴⁶ Constitution of the Federal Republic of Nigeria, CFRN 1999.

Section 42 (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 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, religious 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 communities, ethnic groups, places of origin, sex, religious or political opinions.

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

Subsection(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as member of the armed forces of the Federation or a member of the Nigerian Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.'

The constitution also provides that International treaties must be domesticated by the National Assembly through the agency of re-enactment, before they can be enforceable and operational within the territory of Nigeria. Section 12(1)⁴⁷ provides thus:

'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 the National Assembly'

Thus, the African Charter on Human and Peoples' Right (ACHPR) 1981, for illustration was domesticated in Nigeria by the *African Charter on Human and Peoples' Right*

⁴⁷ Constitution of the Federal Republic of Nigeria, CFRN 1999.

(Domestication and Enforcement) Act 1983, in accordance with the provisions of Section 12 of the Constitution.

Other Nigerian laws, which have domesticated international policies that provide against discrimination on any basis includes the *African Charter on the Rights and Welfare of the Child (ACRWC)*⁴⁸, the *Childs Rights Act (CRC)*.⁴⁹ Government policy practice on education and health, such as the *Universal Basic Education Act*;⁵⁰ and the *National Health Insurance Law*;⁵¹ states effort to improve the ease of doing business index, by discouraging discriminatory local practices so as to attract investors (foreign and local); Increased call and support on the need for greater female participation in public and political offices⁵². More recently, the *Discrimination Against Persons with Disabilities (Prohibition) Act 2019*⁵³. Also, the *Anambra State Disability Rights Law (ASDR) 2018* which was passed by the House of Assembly and signed into the state's law by the governor in 2018 is an example of states legislation against discrimination.

Thus, it is distillable that Nigerian laws at different levels of government all seek to protect (at least in theory), the right to freedom from discrimination of its citizens. We shall proceed to examine the value of such right in Nigeria.

⁴⁸ AU Document . CAB/LEG/24.9/49(1990), Enacted November, 1999 and domesticated in Nigeria in 2001.

⁴⁹ Ratified in Nigeria on the 16th April, 1991.

⁵⁰ Universal Basic Education Act 2004.

⁵¹ The National Health Insurance Scheme (NHIS) which is an offshoot of the law seeks to provide affordable health care to all anywhere in Nigeria to Nigerians irrespective of their social status or ethnic classification or indigeneship status.

⁵² It was the pride of the administration of the former President Goodluck Jonathan that at least, 45% of his ministers were female, which was pari passu the international standard bench mark. In the 2019 elections, a good number of political parties and gubernatorial candidates picked female running mates to prove that they were in tandem with the calls for wider female participation in political and public office.

⁵³ Signed into law on the 23rd January, 2021 by President Muhammadu Buhari following 9 years of relentless advocacy, by Disability Rights Group and Activists.

1.6 The Value of the Right to Freedom from Discrimination in Nigeria Today

It is generally observed that, although there is abundant legislations and face value support against different forms of discrimination, especially based on gender, ethnicity and religion and indigeneship⁵⁴, the intrinsic posture and general practice in Nigeria is at variance in great measures, with these laws and policies. It is indeed assumes a position of observance in breach of these laws. Going by these experiences, the existence of a right to freedom from discrimination within the country may in fact be questionable in the first place, talk more of a voyage to determine its value.

Discrimination itself is closely linked with such words as segregation, separation, distinction, partiality, tribalism, differentiation, ethnicity, unfavourable and unequal treatment, prejudice, injustice, which in alluding to the fact that these problems make up critical issues in Nigeria's affairs at all levels of government, much need not be said. It even permeates pitifully, other aspects as religious, social, economic, educational and other sectors of the Nigerian state. In contrast, the Constitution⁵⁵, the *Federal Character Commission Act (FCCA)*⁵⁶, the *Universal Basic Education Act (UBE) Act* and *Discrimination Against Persons with Disabilities (Prohibition) Act, 2019*, among other Government directive policies employ in abundant use, such words as: 'We the people'⁵⁷, unity, equality, unification, justice and peace, federal character, merit, general good, basic education for all, unity and harmony as one indivisible and indissoluble sovereign nation, cooperation and understanding, welfare of persons, principles of freedom.

⁵⁴ These aspects, which is the focus of this work.

⁵⁵ Constitution of the Federal Republic of Nigeria 1999.

⁵⁶ A 2018 Act.

⁵⁷ Preamble to Nigeria's constitution, CFRN, 1999.

The *Preamble of the Constitution of the Federal Republic of Nigeria* provides the constitution is inter alia ‘...for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people...’ On its face value, these provisions opine that Nigeria’s laws are meant to achieve freedom and justice including absence of discrimination based on gender, ethnicity and indigene-ship on the citizens. However, our national experiences show they are only just existent in black and white on paper. Class consciousness, employment policies that give preference to people who answer to particular areas as ‘indigenes’, disparity on school fees charges for example, for students based on whether they are ‘indigenes’ of the host state or not⁵⁸are practical examples of contrary practice by the people and government.

Customs and traditional practices of the people also point towards the favour of indigenous people of the given place to an extent that is unhealthy for non-indigenes in matters of land/property acquisition, marriage, attainment of community leadership positions, political and public offices, gender gap in these affairs and all other pointers to the fact that the country is a long distance away from being free of discrimination as it has been entrenched in the fabric of our national life. This is not to talk about the attitude of the courts in a few courageous attempts to enforce a right against discrimination over the years.⁵⁹

What is more, the indigenisation policies of many states and government formal or informal policies in their civil service, bidding and award of contract, political and other public offices,

⁵⁸As obtainable in many state owned tertiary institutions where indigenes of the state usually pay a subsidized sum as against other students who although are citizens are not considered indigenes and pay more as such.

⁵⁹The case of *Elizabeth Abosede Badejo v. Minister of Education* [1996] 9-10 SCNJ 51, where the supreme court employed the *locus standi* principle in rejecting an appeal against discriminatory admission policy for the Federal Government owned unity schools which policy denied the plaintiff schoolgirl, suing by her next friend, the opportunity to attend the school despite scoring well above the marked cut off point when compared with her counterparts from the northern states.

etc has indeed become the over ‘federal-charactering of everything’⁶⁰. Even though argued to be geared towards the development of the locality and prioritisation of the indigenous people, will (and indeed has) in extreme situations, be out rightly discriminatory. It is fact that this practice has sipped into virtually every sector including the educational and religious institutions. It is no longer news that the vice-chancellorship of state universities and even federal universities, in recent years, has an unofficial requirement that one must be indigene of the state or host state (for Federal universities) to qualify.⁶¹ Thus merit, quality and competence is slaughtered on the altar, of parochialism and indigeneship.⁶²It is a thin line (which has grossly faded) between indigenisation and discrimination. In the case of *Badejo v. Minister of Education & 2 others*,⁶³ the school pupil of the University of Lagos staff school, (the plaintiff suing by her next friend) was denied admission into one of the unity schools of the federal government, where she had beat the cut off point in examination and interview but her counterparts from the northern region were admitted with lower scores, due to the Quota system. The Supreme Court held that she had no locus standi, that she had not suffered any inconveniences, over and above every other pupil denied admissions in same category. This has sadly remained the narrative in the educational sector, the Right to an education being largely non-justiciable according to the Chapter 2 of the constitution. Thus in *SERAP v. Federal Government of Nigeria and Universal Basic Education Commission*⁶⁴ the Socio Economic Rights Accountability Project (SERAP) had only the opportunity to drag the Federal Government and UBEC to court on the strength of the provisions of the African

⁶⁰ A statement credited to a Former Director of the Federal Character Commission (FCC), which he considered the excessive application of the policy at state and local government levels in an interview on 14th January, 2015.

⁶¹ Survey analysis of the electoral process of over 40 federal universities in the Nigeria.

⁶² Recently in Joseph Tarwuan University of Agriculture, Makurdi (a federal university) ,among three screened candidates for the position of vice-chancellor, the candidate who came out 3rd,a Tiv man from Benue state was preferred as against, an Igala who came 1st and a female Idoma from same state, who came 2nd.in the interview.

⁶³ [1996] 9-10 SCNJ 51.

⁶⁴Suit Number ECW/CCJ/APP/0808. 27th October 2009.

Charter on Human and Peoples' Right, which the ECOWAS court upheld on the right to get an education.

Other practices as state-of-origin requirement for certain jobs and indeed every formal application or documents in Nigeria, the Indigene-Settler segregation, (which is brought to fore with any given opportunity, especially during elections as 'playing the ethnic card', all reflect different levels of discrimination. Regional Security outfit, laced with religious affinities in Northern Nigeria which operates with the *Sharia Law* of Northern Nigeria may also highlight these challenges.⁶⁵

1.7 The Ordeal of Honourable Justice Akon Bassey Ikpeme, Cross River State Chief Judge as case study.

Hon. Justice Akon Bassey Ikpeme was born in Calabar to a Calabar mum and an Akwa Ibom dad in the old Cross River state (at a time when Akwa Ibom was part of Cross River state).⁶⁶ She had her basic education in Cross River and eventually, married a Cross Riverian. She was employed and worked for decades as a judicial officer, became the Director for Public Prosecution (DPP) and eventually appointed Judge in 1998, by the Cross River State Government. The Cross River State House of Assembly withheld her confirmation by rejecting her nomination by the National Judicial Council twice⁶⁷ as Chief Judge on the grounds that she is not 'originally' from Cross River state, that she is an indigene of Akwa Ibom State and only married to a Cross Riverian, therefore constitutes a 'security risk'.

⁶⁵ The arbitrary arrest of young persons with hairstyles, termed 'anti-islamic by the sharia police in Kaduna, Zamfara, Kano and other sharia practicing states with local police. Destruction of alcoholic drinks and people's property used as clubs or bars is discriminatory as they infringe on the citizens' rights to liberty, religious and social life, especially people from southern Nigeria which their northern counterparts do not suffer.

⁶⁶ Akwa Ibom state was created out of old Cross River state on 23rd of September, 1987 by the military regime of General Ibrahim Babangida.

⁶⁷ On march 2020 and May of same year.

During her screening in the Crossriver state House of Assembly, Justice Ikpeme was asked where she would stand between Crossriver and Akwa Ibom, if there was a matter. Her response was that she would stand down the case and reassign it to someone else. This got a lot of political interests and ordinary men in the street analyst enraged, especially those who could not appreciate the legal perspectives, especially the principle of fair hearing of one not being a judge in his own cause– the ‘*Nemo Judex in causa sua*’ rule. This highlights well the gender issues, where society is generally sceptical in entrusting women with any critical authority or sensitive position and when they rarely do, what should ordinary be her private affairs is subjected to unnecessary scrutiny. The question of her family affairs- loyalty to her husband, his place of origin and his kinsmen and as against the business interest of the employer; or time for domestic chores, to take care of children, to be in the kitchen or the ‘other room’⁶⁸ against productive work hours. This for instance will play out in a scenario where a woman who is human resource manager and medical psychologist with great effort has to separate official duties where she deals with a lot of confidential information for her firm, from her husband, who is a Public Prosecutor and the State Attorney in dire hunt for incriminating evidence against the billionaire firm, where his wife works. Such a woman stands the chance of losing either her family or her job or both, where for example her husband lays hold on the implicating information he has always sought for among, her files and goes ahead to utilize it.

Also the ethnic and ‘indigene-ship’ card is readily flashed when for instance, Justice Ikpeme is referred to as a ‘security risk’ to Cross River state for having an Akwa Ibom origin, even though almost every aspect of her life points towards Cross River state-her basic education and growing up, marriage, work and family.

⁶⁸ A phrase touted to be credited unpopularity to the President Muhammadu Buhari of Nigeria when he was asked in an interview, about his opinion on engaging his wife in formal official capacity as first lady, which he does not favour.

Thus, the popular opinion of society always tugs on the sleeves of the productivity of women in their work place due to domestic roles, their confidential capacity and loyalty due to marriage and family ties, their ability to take courageous decisions on critical issues due to their share, femininity, ethnic background and indigene-ship. This has been the narrative for many generations world over, but have begun to receive (and all the more, these days) some revision in several quarters, including Nigeria⁶⁹

A host of concerned lawyers including the Nigerian Bar Association filed a fundamental right claim at the Federal High Court, Calabar, seeking to enforce Justice Ikpeme's right against discrimination. The trial court dismissed preliminary objections raised by the Attorney General of Cross river state and equally proceeded to dismiss the case. An appeal had a legal team consisting of *Chief Ferdinand Orbih SAN, Femi Falana SAN, Anthony Malik SAN, Daniel Kip, Esq* and a long list of lawyers. Being the most senior judge in the Crossriver state judiciary, who has been recommended by the National Judicial Council (NJC), for appointment by the governor, Professor Afe Babalola (SAN)⁷⁰ noted that the above was a gross violation of her right to freedom from discrimination. The law regarding the appointment of provides under Section 271(1) of the constitution⁷¹ provides that,

'The appointment of a person to the office of Chief Judge of a State shall be made by the Governor of the state on the recommendation of the National Judicial Council, subject to the recommendation of the appointment by the House of Assembly of the state'

⁶⁹ Nassarawa state for example has just appointed its first female Chief Judge, Hon. Justice Aisha Bashir-Aliyu; The University of Benin, its 2nd, (after a long while) female Vice Chancellor, Professor (Mrs.) L.I. Salami; and the Faculty of Law in the university its first female Dean, Professor (Mrs.) V.O. Aigbokhaevbo.

⁷⁰ In his article, 'Hon. Justice Ikpeme's appointment as Chief Justice: Birth place' Law Care Nigeria. 1st July 2020.

⁷¹ Constitution of the Federal Republic of Nigeria, CFRN 1999.

This provision is meant to guarantee Judiciary independence from the whims and caprices of the Executive and Legislative, necessary for democratic arrangement. The NJC does not act in isolation too. The body takes the list of qualified Judges from the State Judicial Service Commission (SJSC)⁷², which it filters and presents the most meritorious name to the governor for appointment. NJC and the SJSC consider *Rule 3(6) NJC Procedure Rule*, which provides the chairman of State Judicial Service Commission shall consider the following:

- a) *professional expertise and competence*
- b) *Sound knowledge of the law*
- c) *Seniority at the Bar and the Bench*
- d) *Federal character or geographical spread, without compromising the independence of the judiciary or allowing politics to permeate or influence the appointment.*

Rule (4) NJC Procedure Rule also provides candidate must have good character and reputation, diligence, hard work, honesty, integrity and sound knowledge of law and consistent adherence to professional ethics. *Professor Babalola*⁷³ notes that there is no provision, among the qualities expected of a candidate that requires him or her to be an indigene of the state in question. He observes accordingly that *Justice Ikpeme* has met the qualifications which prompted the NJC to recommend her, finding her ‘fit and proper’, even as she is the most senior Judge in the Cross River State Judiciary. He⁷⁴ opined that ‘*Refusal of confirmation based only on the fact that she is not an indigene of Cross river state by birth is in my view discriminatory in the extreme*’

The motto of the Federal Republic of Nigeria is provided under Section 15(1) (2) (3),(c) and(4) of the Constitution as ‘*Unity, Faith, Peace and Progress*’, encouraging national

⁷² Paragraph 21, Part 1, 3rd Schedule Constitution of the Federal Republic of Nigeria 1999.

⁷³ Ibid.

⁷⁴ Professor Afe Babalola SAN in the article quoted in footnote Number 36.

integration, while the right to freedom from discrimination is guaranteed under *Section 42 of the constitution*⁷⁵

In other climes, the United States of America, in the State of New York, for example, appointment to the bench of New York State is made by the governor from a list of nominees prepared by the commission on Judicial Nomination with the advice and consent of the State Senate. Eligibility requirements include: residence and admission to practice as an attorney in New York State for at least 10 years. The procedure for appointment as well as qualifying requirements to the Bench in the state, are similar to that of Nigeria.

Other states in Nigeria that have had similar challenges centred on discrimination, especially against female judges married within the state include Abia, Kano and Lagos among others.

This work enquires whether our legislations and practices suffice to guarantee freedom from discrimination on the basis of gender, ethnicity and indigeneship.

⁷⁵ Constitution of the Federal Republic of Nigeria, CFRN 1999.

CHAPTER TWO

GENDER-BASED DISCRIMINATION

This chapter examines gender-based discrimination; its manifestations, especially on particular sex; the provisions against it and how it fares generally within the Nigerian society.

2.1 The Meaning of Gender -based Discrimination

Gender is the state of being male or female in relation to the social and cultural roles that are considered appropriate for men and women. Gender discrimination is also gender bias, gender bias, gender binary, gender dysphoria, gender gap.¹

Gender-based discrimination, antithetical to Gender equality, is the disadvantageous and unequal treatment of an individual or group of individuals based on gender.² It is also known as sexism, the prejudice or discrimination based on one's sex or gender. Sexism can affect anyone but it primarily affects women and girls.

2.2 Constitutional and other International Provisions against Gender-Based Discrimination

Nigeria's constitution under Section 42,³ among other things provided for a right to freedom from discrimination, based on gender when it provided a prohibition against a '*disability or restriction*'⁴ based on '*sex*'⁵ which other citizens are not subjected to or a privilege on same basis not accorded to other citizens.⁶ Also in section 42(2), when circumstances of birth is considered in the perspective of male or female children distinction that is greeted with different levels of appreciation in Nigeria and Africa generally, provides against gender

¹ Collins English Dictionary.

² Langston University web master@ Langston edu.com. accessed on the 20th of April, 2021.

³ Constitution of the Federal Republic of Nigeria, CFRN 1999.

⁴ Constitution of the Federal Republic of Nigeria, CFRN, 1999. Section 42 (1) (a).

⁵ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Section 42 (1).

⁶ Constitution of the Federal Republic of Nigeria CFRN, 1999, Section 42 (1) (b).

discrimination. While Subsection (3) of same section provides some exceptions, where situations will not amount to discrimination and differentiation is necessary.

The constitutional provision on the Right to dignity of Human person under, Section 34, also reinforces the right to freedom from discrimination based on gender when it provided against subjection to *'torture or to inhuman or degrading treatment'*⁷ or *'slavery or servitude'*⁸ or forced or compulsory labour⁹, which at times is associated with gender in Gender based Violence (GBV). The right to liberty under Section 35¹⁰ also aligns with the right to freedom from discrimination.

International provisions like the African regional African Charter on Human and Peoples' Right, 1983, LFN 2004; others like the Convention on the Elimination of Discrimination Against Women (CEDAW); the Universal Declaration of Human Rights (UDHR) 1948, a brain child of the United Nations Human Rights Charter, 1945, all provide against gender discrimination.

The general non-discrimination clause in the African Charter on Human and Peoples' Right (ACHPR) reads thus:

*'Every individual shall be entitled to enjoyment of rights and freedom recognised and guaranteed in the Charter without distinctions of any kind such as ...Sex'*¹¹

Article 3¹² provides for *'equality before the law'*¹³ and *'equal protection of the law'*.¹⁴

Article 18(2) deals squarely on discrimination against women, which similar provision is contained in Article 2 CEDAW and Article 1, UDHR.

⁷ Constitution of the Federal Republic of Nigeria, CFRN 1999, Section 34 (1) (a).

⁸ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Section 34(1) (b).

⁹ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Section 34(1) (c).

¹⁰ Constitution of the Federal Republic of Nigeria, CFRN 1999.

¹¹ Introductory statement on discrimination, African Charter on Human and Peoples' Right, ACHPR., 1983.

¹² African Charter on Human and Peoples' Right ACHPR 1983.

¹³ African Charter on Human and Peoples' Right, ACHPR, Article 3 (1).

¹⁴ African Charter on Human and Peoples' Right, ACHPR, Article 3(2).

In the Beijing Declaration adopted at the Fourth World Conference in 1995 on Women, Nigeria among other nations, in attendance expressed its

However, with the promulgation and presence of these legal instruments, much is yet desired when the effectiveness of the same is considered, as the people and societal pulse in Nigeria seem to suggest otherwise as they hold very strongly to male dominance and general disadvantageous posture on the female gender, which will take persistent and consistent efforts to change the narrative. Oputa JSC¹⁵ had observed some years ago¹⁶ that *'it will amount to shallow utopianism to think that even the legislature can do away, overnight with popular mentality and prevailing social, mental, moral and even religious prejudices against the female in a male dominated world'* which today, 32 years later is still very much a valid point.

2.3 Women as the Centre Piece of Gender Based Discrimination

It may be necessary to start by reproducing the assertion of Justice Chukwudifu Oputa,¹⁷ where he said *'it is written, a daughter is a rain of treasure to her father. From anxiety about her, he does not sleep at night - during her early days, lest she be seduced - in her adolescence, lest she goes astray - in her marriage, lest she does not find a husband- when she is old, lest she be accused of witchcraft'*¹⁸

All through a woman's life, it indeed seems that nature conspires against her, in a world defined and controlled by a patriarchal system and *'man's strength for everything'*.¹⁹ In the words of Shirley Chisholm²⁰ *'the emotional, sexual and psychological stereotyping of females begins when the doctor says: "It's a girl"'*

¹⁵ As he then was.

¹⁶ 1989, a paper presented at a National Seminar on Women and Children held in Abuja, the F.C.T.

¹⁷ An amiable retired Justice of the Supreme court of Nigeria.

¹⁸ A 1989 seminar on Women and Children as Disempowered Groups.

¹⁹ Activity timeline and daily tools, changing a flat vehicle tire, manual pumping machines for water, etc for instance are built in envisaging that strength of men is applied to make them work.

²⁰ www.justquoted.com/quote/The_emotional-sexual-and-psychological-stereotype.htm. Accessed 26th April, 2021.

Gender discrimination, the prejudicial treatment on the basis of being male or female comes in different forms and to different degrees. *Gender stereotypes dictate that men are in a position of power and so, it is automatically assumed that only women are victims of domestic violence. This is not ok as everyone- no matter the gender- deserves help*²¹

On the male gender, there could be such discrimination when he engages in certain occupations or activities that are generally, stereotyped as feminine. When for example, there is a job opening and call for applicants for hiring a nursing officer in a hospital or a confidential secretary for the boss in a firm and men eventually take the jobs, there is a gender-specific social pressure, discrimination, even stigma informally hanging over their person, in a society like ours. That notwithstanding, women are generally the centre piece and subject, more often than not, of gender based discrimination. The victims of discrimination tend to be the most disadvantaged groups of society, such as women, minorities, indigenous people, refugees and disabled persons.²² The principle of non-discrimination demands that vulnerable groups be given peculiar attention. When people are in unequal situations or in unequal state, treating them in the same manner perpetuates invariably, rather than eradicate injustices. In many societies world over, the status of a female is considered inferior and only subordinate to male status²³

2.4 Manifestations of Gender Based Female Discrimination

There are several manifestations of discriminatory practices which is usually centred on the female gender.

In the home front and family, issues like female disinheritance occur in Nigeria especially dominantly obtainable in Eastern Nigeria and a little less in the Western Yoruba culture and

²¹ The National Human Rights Commission (NHRC) Campaign against gender based violence (GBV) 2021 with Stephanie Okereke.

²² Adeyinka A. Adejugbe and Adedolapo N. Adejugbe. 'Women and Discrimination in the Workplace: A Nigerian Perspective' page 2.

²³ Charles Bunch, 'Women's Right as Human Rights: Towards a Revision of Human Rights. Human Rights Quarterly' 1991.

the Northern Islamic Customary Law. In the case of *Taiwo v. Lawani*,²⁴ for example, a daughter under the *Igbikankan or Idiigi* Yoruba customary law was held allowed by the court to inherit, solely as the only issue, the portion of her late father's estate due to her mother, as one of the wives of the deceased. However, this is one in several cases, which are that are inclined against the women in terms of succession to estate, except in recent cases that have at least changed judicial decision to the favour of the female gender,²⁵ much is left to be desired in their practical manifestations. The fact that the society is patrilineal and offspring is identified and accounted for, by genealogy of the father, and his place of origin as against the mother further exhibits the issues. Thus, Justice Akon Bassey Ikpeme, was not associated with her roots in Cross-River, through her mother's place of origin.²⁶ Wife inheritance as practised in certain customs and traditions, at the discretion of the brother to the deceased in the name preserving the deceased's integrity, but which arrangement is not open to the widows in deciding whether to look elsewhere for married life, once such arrangement has been decided. Physical violence and marital rape, marginalization of women in Customary and even statutory marriage dissolution all point towards the female gender.

In the affairs of marriage and parental consent, the burden is laden on the female gender to so obtain consent, regardless of her age in customary settings. In *Ugboma v. Morah*,²⁷ an exchange of promise to marry was made between two Ibos during infancy and later repeated in their adult life in circumstances that made it a new agreement. The defendant when sued for breaking his promise argued that in Ibo custom, a woman does not have the capacity to enter into a marriage contract without parental consent and no such consent was given. *Waddington J.* rejected this contention and stated that '*it cannot be possibly argued that where parties are of age, the withholding of consent by their parents is a bar to them*

²⁴ [1961] ANLR 773.

²⁵ *Aniekwe v. Nweke* [2014] 9 NWLR (1412) 393; *Salubi v. Nwariaku* [2003] 7 NWLR (Pt.819) 426; *Ukeje v. Ukeje* [2014] 11 NWLR (1418) 384, for example where Bode-Rhodes Vivour, JSC stated that the 'Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42 (1) and (2)', of the constitution her guaranteed right to freedom from discrimination.

²⁶ Justice Ikpeme's mother is from Calabar in Crossriver state.

²⁷ [1940] 15 NLR 78.

contracting a ...marriage. It cannot therefore be a defence to this action to say that the plaintiff lacked the necessary capacity to make a valid promise to marry defendant unless her parents consented to him'

On domestic violence, it has been observed that violence against women constitutes a highly damaging dimension of the dehumanisation of women on the basis of culture. This still remains common practice in the localities, *'either as a means of maintaining the masculinity or male superiority or of keeping female spouses in check'*.²⁸Widowhood and all its harrowing features in many traditional African settings: restriction of widow's movement; shaving of hair; sleeping on the bare floor and adornment in black clothing; the mandatory mourning period for which widow is prevented from engagement in any meaningful economic activity; all in other to rub in the death of her husband, else she be accused of being responsible or approving her husband's death is not a new narrative obtainable with modifications, in different traditional societies. These practices although, depicting the value, which the traditional societies attach to family relationship, love and the death of a loved one, glaringly discriminates a widow physically, economically, socially, psychologically and in many other respects, especially when it is considered that the men are not subjected to nearly a half of these conditions at the death of their wives. Many widows, never fully recover from the dehumanising treatment nor, does the society provide any means of rehabilitation, except efforts by the women themselves or Non-Governmental Organisations (NGOs) who have persistently advocated for the discontinuation of such barbaric practices, which are infractions to widow's rights to personal liberty,²⁹ dignity of human person and even right to life³⁰ when the fact that these practices have far reaching effect on the health and can cause death of the widow victim is considered. Wife inheritance, when the original husband's death

²⁸ Ngozi G.Egbue, *Gender Distribution of Domestic Role: Implication for Social Equality in Nigeria*. The Nigerian Journal of Sociology and Anthropology. Volume 7, Issue, 2009.

²⁹ CFRN 1999, Section 35.

³⁰ Constitution of the Federal Republic of Nigeria, CFRN 1999, Section 33.

does not terminate customary law marriage, which makes the widow liable for remarriage by a deceased's brother, where practised but on the reverse side is not so for a man who loses his wife being urged to marry a sister of the deceased, portrays the unequal treatment and distinguishing between people on the basis of their gender.

Alarming approval of wife chastisement so long it does not cause 'grievous bodily harm' under *section 55(1) (b) Nigerian Penal Code*³¹ which the Court of Appeal in *Akinbuwa v. Akinbuwa*³² gave acknowledgement for operations.

In cases such as *Ejiamike v. Ejiamike*,³³ the court essentially held a widow, had no rights to her late husband's estate. In *Nezianya & anor v. Okagbue*,³⁴ parties were from *Onitsha*, where the lands in dispute were situated. On her husband's death, widow took over the letting of their houses to tenants. She later sold a portion of the land and built a mud hut on another portion with the proceeds. Attempting to sell off more lands, her late husband's family objected. Widow later devised property to her late daughter's child (her granddaughter) who sued her grandmother's husband's family claiming a right to exclusive possession on the grounds that the widow (her grandmother) had long possession of the land. Trial court held widow's possession of the land, not adverse to husband's family's right, to an allow her acquire an absolute right to possession which the supreme court affirmed as she is only free to deal with the property and occupy the buildings therein or part of it, but this 'subject to good behaviour'. Without considering the implications of the decision itself, the subjection of right to enjoy property by a person who is considered endowed with some rights to the same property, 'subject to good behaviour' goes to show levity which the rights of certain classes of people the female folk, are treated. *Kabiri-whyte, JSC* observed that the '*Igbo customary*

³¹ Applicable in Northern Nigeria together with the Penal Procedural Law before the unifying promulgation of the Administration of Criminal Justice Act (ACJA) 2015

³² [1998] 9 NWLR (564) p.100.

³³ [1972] 2 E.C.S.L.R. 11 VOL.2.P.431.

³⁴ [1963] 1 All NLR p.52.

*laws are gender discriminatory and very illiberal towards women's rights'. However, Section 36 of the Marriage Act³⁵ provides for rules for inheritance and succession to a deceased husband's estate by his widow. This however, does not do much to influence the practice in various communities and cultures. Justice Aguda³⁶ in the *Botswana* case of *Unity Dow v. Attorney General, Botswana* observed that 'Nigeria is signatory to virtually all international instruments and treaties on women emancipation and empowerment, yet these harmful cultural practices, still persist, especially at the rural level'*

In *Mojekwu v. Mojekwu*,³⁷ where the *Oli-ekpe* customary law of *Nnewi people*³⁸ favoured an uncle's inheritance of a deceased's land instead of a daughter, was held to be repugnant, per *Niki Tobi, JCA*³⁹ to natural justice, equity and good conscience.

Female Genital Mutilation as a violation of women's right against torture, degrading treatment and right to dignity of human person.

When the access to information and education is considered, it may seem to have been liberalised and open to any gender today,⁴⁰ but this may not be the narrative everywhere, especially in rural areas and suburbs. Unequal access to education opportunity and the son preference syndrome are still tangible in those areas and even the cities. Early marriage (usually by compulsion without voluntary consent), especially in the northern parts of Nigeria infringes the right to personal liberty⁴¹, dignity of human person,⁴² and right to basic education⁴³ impair the access to education of women, when compared to men.

³⁵ Cap M6. Laws of the Federation of Nigeria (LFN) 2004.

³⁶ A former chief Justice of the Botswana Supreme court.

³⁷ [1997] 7 NWLR (283) 1.

³⁸ Of Anambra state, South East, Nigeria.

³⁹ As he then was, in the Court of Appeal, Enugu division.

⁴⁰ Especially in the urban cities and towns in Nigeria.

⁴¹ Constitution of the Federal Republic of Nigeria, CFRN 1999, Section 35.

⁴² CFRN 1999, Section 34.

⁴³ The mandate of the Universal Basic Education [UBE] Act, 2004.

The polygamous nature of customary law marriages (as a common feature in most customary law societies in Nigeria), by its very nature breeds discrimination of females based on gender. Where a man is allowed (whether he has the means or not) to marry many wives as he chooses.⁴⁴ The women on the other hand are not on same pedestal to fend for themselves and children freely⁴⁵ as they have the primary duty to compete for their husband's love, which he showers with material gifts on the most favoured wife, which the unlucky ones suffer all types of deprivations and limitations of society like obligation to perform domestic roles and others like, that a woman be found only in trade where other women are engaged and interact less with men, especially as she is married.

All been said and done, in this time and age, unhealthy, discriminatory and socially undesirable customs, especially those for which statutory and constitutional provisions have been made should be squarely resisted, by every legal means including court process, especially customs that have defied modification and adaptation to prevailing civilizing orders, which by the way is ordinarily supposed to be a vital feature of customs as stated by *Osbourne CJ*, in *Lewis v. Bankole*. As was observed in *Unity Dow v. Attorney General Botswana* '*customs and traditions have never been static; they have always yielded to express legislations...A constitutionally guaranteed right cannot be overridden by custom...The customs will be read, so as to conform to the constitution. But, where it is impossible, it is the custom, not the constitution which must go*'

The job description which society attaches to women is usually, those centred around kids, care, support or assistance and not main roles and leadership. Thus such 'traditionally feminine jobs as teaching, nursing, clerk and secretarial duties, supportive of men, who own the more regarded jobs, like being the doctor (while the women assist as nurses), the Chief

⁴⁴ Although Islamic customary marriage allows to a limited number of four wives.

⁴⁵ They, by reason of marriage status, are not expected to be found in certain places or associate in a male dominated economic endeavours.

Executive (with a female secretary), the Architect and Civil Engineer, designing the plan and constructing the house while the lady ‘brings food for the workmen’⁴⁶ and prepares only to live in the house when completed. It is not surprising that a woman be deemed ‘fit and proper’ to serve as clerical secretary to a company’s Chief Executive, it will only look inappropriate if it were the other way round. Accordingly, the greater pay and regard also go with these ‘higher jobs’ which women are not ordinarily expected to aspire for Justice Ikpeme⁴⁷ of Cross River State, in our scenario considered in Chapter 1⁴⁸ for example was not opposed as a judge until she was to be appointed Chief Judge. Her becoming a ‘security risk’ only arose because she was about to clinch a vital and critical position of authority which men have traditionally held, unperturbed. The consideration that they are ‘weaker vessel’ who cannot carry on physical energy exerting jobs like automobile mechanics, industrial manufacturers and machine operators and building contractors and so on, further compound these biases.

Women therefore, are the centre piece of gender discrimination in the family and domestic, as well as economic, social, political, psychological, religious, cultural and educational sectors of society.

Educationally, the gap between out of school children and children within the eligible age bracket is always greater on the part of the girl child,⁴⁹ despite several campaigns to cover the gap, like various civil society organisations. Infact, the recent judgement of the Federal High Court sitting in Abuja per *Tsoho J.*, in *Legal Defence and Assisted Project (LEPAD) GTE & LTD v. Federal Ministry of Education & Anor*⁵⁰ held that the right to free and compulsory (for primary school age) basic education which is imputed in the non-justiciable chapter 2 of

⁴⁶ A traditional role women are observed to play in such scenarios especially in villages and localities.

⁴⁷ The Chief Judge of Cross River State who we have considered her prior ordeal.

⁴⁸ Sub-heading, 1.7. Chapter 1 above .

⁴⁹ Ratio of 42:47 % of boys to girls out of school children in Nigeria 2020.

⁵⁰ SUIT NO: FHC/ABJ/ CS/978/15.

the constitution⁵¹ has become fundamentally enforceable against the Federal and State governments by virtue of the *Universal Basic Education Act 2004*, which enactment saw the removal of the goal of free basic education from the non-justiciability clause.⁵² This will be of immense benefit to children of school age especially the girl child but as it the narrative in most such policies in Nigeria, they are yet as documents and much is left to be desired in implementations.

2.5 Jobs and Work Place Gender Discrimination

As has been noted earlier, gender discrimination in the work place is not restricted to only the female gender. Men have been discriminated against in forms of spite and disdain, when they engage in jobs that are traditionally labeled as belonging to the female, even by the females themselves. Tantrums and name calling will not elude a male nurse or baby sitter in a crèche at, one point or the other in one form or the other. However, the bulk of workplace discrimination is on the female gender and its manifestations are diverse. Despite the labour force participation rate gradually closing up and some improvement in the educational and professional attainment of women in Nigeria, this is yet to translate into significant improvement with respect to increased decision-making power for women and the government creating an enabling work friendly environment for women.⁵³ The right against unfair discrimination in the workplace emphasizes economic, social, and cultural development. Prevailing laws and policies of the Nigerian governments do not seem to give wide coverage and recognition to the rights of women in the work place.⁵⁴

Discrimination has a wide-ranging effect on labour relations at the work place. It begins from the method an employer hires staff, that is decisions on who to employ, the terms of

⁵¹ Constitution of the Federal Republic of Nigeria CFRN 1999, section 18(3).

⁵² Constitution of the Federal Republic of Nigeria CFRN 1999, section 6 (6) (c).

⁵³ Adeyinka A. Adejugbe and Adedolakpo N. Adejugbe: *Women and Discrimination in the workplace, A Nigerian Perspective*.

⁵⁴ Mohammed Nasir, *Women's Rights in Nigeria*, (ABU Press Ltd 1998).

employment, access to promotion and benefits, training courses and dismissal. Direct job and workplace discrimination on the basis of gender will entail unequal treatment of employees because they are female when compared with their male counterparts. Indirect discrimination entails neutral practices or criteria which although applies equally to all employees but the result favours one gender group over the other. The intention to discriminate or not being immaterial, but the consequences are the determining factor. An instance is given with the advertisement for job opening which requires that candidates should not get pregnant during the pendency of the contract of employment, which is indirectly discriminatory against women, as was the facts of English case of *Enderby v. Frenchay Health Authority*⁵⁵

The Nigerian traditional society justified the marginalization of women in education, economy, labour market, politics, business, family, domestic matters and inheritance.⁵⁶ Based on the Nigerian cultural, social and traditional norms, girl child is encouraged to learn traditional women based trade- crafts making; cloth dyeing; weaving; subsistence agriculture; food processing; trading among other such skills, which fine tunes their attitude and socialisation as needed future workers and family women. Although commendable, this process must not be detrimental to their schooling or harmful to their health and development. This is more because working in early childhood years may have negative effect by reinforcing gender discrimination by denial of education. The practice of confining the productive efforts of women to domestic sphere alone is not peculiar to Nigeria or Africa but also obtained in European and Asian countries.⁵⁷ Men exercise their control in receiving personal service work from women in not having to do house work or cater for children. The idea of equality of sexes in employment is foreign to Nigerian native law and custom.

⁵⁵ [1994] 1 All ER 495; [1994] ICR 112, ECJ.

⁵⁶ Richard Lister. *Women in Poverty* 1995.

⁵⁷ American case of *Bradwell v. United States* [1873] 83 U.S., 130 where Mrs. Bradwell who got qualified, asserted her right to be called to the State of Illinois bar and to practice law, against the backdrop of its restriction to only men and against married women and she got judgement.

Women today engage in management of the household, while they carry out workplace responsibility, which requires them invariably to do double entry work at home.

CHAPTER THREE

DISCRIMINATION BASED ON ETHNICITY

3.1 Meaning and Constitutional Provisions

Ethnicity describes the common characteristics of a group of people, especially regarding ancestry, culture, language or national experiences, a race with common ancestry. Oxford Advanced Learners' Dictionary,¹ posits it as the fact of belonging to a particular race or culture. A grouping of people who identify with each other on the basis of shared attributes that distinguish them from other groups. Religion entails belief system involving. Black's Law Dictionary defines religion as a system of faith and worship usually involving belief in a supreme being and usually containing a moral or ethical code, especially such a system practised by a particular church, sect or denomination.

Discrimination based on ethnicity and religion therefore entails deprivation or prejudicial distinction of a person on the basis of his cultural and tribal ancestry or belief system which he identifies with. Black's Law Dictionary provides ethnic discrimination in relation to racial discrimination, where it becomes racial profiling - a law enforcement practice of using race, national origin or ethnicity as a salient basis for suspicion of criminal activity,²

However, Section 42 of the constitution³ provides expressly against this form of discrimination based on '*ethnic group, place of origin, religion or political opinion*'.⁴ The right to freedom of thought, conscience and religion being guaranteed under Section 38 of the constitution is one of the Fundamental Human Rights.

¹ 8th Edition 2004.

² Black's Law Dictionary. Page 3948.

³ Constitution of the Federal Republic of Nigeria, CFRN 1999.

⁴ Ibid.

3.2 Extent of practice of Ethnic Discrimination as a Threat to National Objectives

The national goals and state policy guide of Nigeria, properly labelled the *Fundamental Objectives and Directive Principles of State Policy* in the Nigeria's Constitution⁵ provided in Chapter 2 the basis for the government which includes security and welfare of the people, national unity, non predominance of persons from a few ethnic or other sectional groups, 'recognising the diversity of the people within its area of authority and need to promote a sense of belonging and loyalty among all the Federation'⁶

The realisation of our national objective is under threat continuously and indeed bedevilled by palpable ethnic bigotry, to frightening degrees, in different manifestations today.⁷ Access to resources and services, be they educational⁸ or political,⁹ social and economic. When for instance in securing a service like banking service, there is a queue, the fact that one comes from a particular ethnic group grants him special favour to jump the queue, especially when the official in charge share same ethnic group with him. It has also been manifested in religious institutions¹⁰

Peoples' favour, blessings, support, discounts, gifts, privileges and forgiveness are biased in favour of people who share same tribal or religious persuasions and identity as they do, especially when someone has not consciously educated himself on the all important necessity of living above such bigoted classifications. It is thus not surprising, that the Cross River State House of Assembly made of legislative members who are replica of the likely

⁵ Constitution of the Federal Republic of Nigeria, CFRN 1999.

⁶ Section 14(4) CFRN, 1999. Although these provisions are non justiciable by the reason of the operation of section 6(6)(d) which ousts the content of chapter 2 from being entertained in any court of law.

⁷ Nigerians have been said to be more divided along ethnic and religious corridors in the midst of all the insecurity challenges that have risen and refused to abate.

⁸ When the admission policies of certain tertiary educational institutions are put under review.

⁹ For example the general qualifications to aspire for political office, whether stated openly or observed unofficially.

¹⁰ The rejection of Right Reverend Peter Okpalaeke in the Catholic Diocese of Mbaise by the clergy and members of the church because he does not hail from the community, exhibits its manifestation in religious institutions.

behaviour and inclination of an ordinary African and typical Nigerian could not aver its mind to look beyond the bigoted ethnic classification of *Hon. Justice Ikpeme*.¹¹

Beyond the national highlights, economic deprivations, based on ethnicity and nationality where denial of privileges and opportunities against the foreign population also carries traces of discrimination based on ethnicity. For example, the locking up of stores of Nigerian traders in Ghana by the authorities with the support of the government¹² or refusal to trade with people from a particular ethnic group or religious persuasions are manifestations on this basis, while xenophobia, xenophobic attacks and ethnic cleansing are extreme forms of it. South Africa has been notorious¹³ to severally attack fellow Black Africans, especially Nigerians¹⁴ and other East and West Africans, over fear of their population and dominance in their country, especially in those in business. These attacks still go on from time taking different guises like exorbitant taxes and restrictions.

In Nigeria, such practices as restriction on the ease of doing business by locals through the instrument of refusal of land sale or leases to Foreign investors,¹⁵ or traditional charge of High taxes by traditional rulers, youth groups of the given area, arson and destruction of property are all, sabotaging ethnic discrimination.

For inter-tribal marriages, a lot of resistance is still observable on the part of families and locals who do not want to give their daughters' hand in marriage, nor allow their sons bring in women from other tribes, which they tag 'foreigners' is a great discriminatory gap which will need persistent and robust re-orientation of Nigerians on this matter to surmount.¹⁶

¹¹ The formerly embattled CJ who even so is one of their number by tracing her matrilineal parental roots to Crossriver and by marriage to a Crossriver man.

¹² Ghanaian government had insisted that their taxes were well sorted as reason for their action.

¹³ Especially within the last seven years.

¹⁴ Attacked in 2015 and 2018.

¹⁵ In *Olowu v Olowu* [1985] 1 NWLR (13) 372, the Ijesha man from Osun had to naturalize as a Benin man which among other things enabled him to acquire landed properties within Benin kingdom and the old Bendel region.

¹⁶ Although more educated young people and parents alike have begun the abandonment of such bigotry.

3.3 Ownership, Leases and Sales of Land in Communities

Apart from land which have become somewhat accepted as more in the hands of the secular Governments Authorities in the cities and other urban areas, land is generally held, and tightly so, in the hands of various communities and family groups where they may be found. It has been said¹⁷ that the *Land Use Act 1978*¹⁸ was promulgated into law in order to free lands, especially in southern Nigeria from the tight fist of communities that did not avail them for government uses and purposes. This may, perhaps also imply, that these communities and households maintained ownership of these lands, and made them available only for their use and foreigner who may not be indigenes of such places may not enjoy such use of land as the community members, notwithstanding that they are all citizens of same country. This assertion may be given credence by the statement made by *Gboteyi, the Eleshi, second chief of Odogbolu, Ijebu-Ode* in typical Africa that ‘...land belongs to a vast (group of people connected by blood and) family (ties), of which many are dead, few are living and countless members are yet unborn’. This entails that land is envisaged to be used by the members of the given owning community and little or no attention is paid to the needs of foreign settlers which is a form of ethnic discrimination. We shall see in a few cases that even the traditional processes laid down for the lease and hardly ever, outright sale of these lands to foreigners perpetuate systematic ethnic discrimination. In *Olowu v. Olowu*,¹⁹ for instance, although not expressly stated as the reason for his action, the conversion to *Bini* Culture by the *Ijesha* born Mr. Olowu was a licence and good standing to acquire property within the Benin Kingdom and indeed other areas of the then Bendel state²⁰. Perhaps, some of those property may not have been obtained had he not become a part of the community in the manner he did.

¹⁷ Emeka Chianu, *Sales of Land*.

¹⁸ L5, Laws of the Federation of Nigeria (LFN), 2004.

¹⁹ *Supra*.

²⁰ Comprising formerly of Edo and Delta states of Nigeria.

It has been asserted that communal lands may be owned, without individual claims of ownership,²¹ by a tribe, clan, town or village or an extended family.²² Communal land is refers to any land in which all the members of a community have a common interest, all of whom are jointly, severally and directly liable for debts properly incurred with respect thereto²³. The case of *Lewis v. Bankole*,²⁴ as well as the decision of the Court of Appeal in *Lebile v. Rev. Preshec & ors*,²⁵ it was observed that in West Africa, there is a presumption of communal ownership of land and therefore, where an individual or group asserts exclusive, as against communal rights, the burden is against such individual to prove exclusive ownership. Thus, the alienation of such community land is quite farfetched from being envisaged as, the members of community only are allocated lands upon which to live and farm and do other businesses. A stranger who is an immigrant or settler, may however be granted customary land in return for which he acknowledges the title of the community by payment of customary tributes. In *Awure v. Iledu*,²⁶ only the concurrence between family head and principal members can family land be alienated, which was same decision in *Animashaun v. Onyekwuluje*.²⁷ It cannot be alienated by a lone family or community member for he is not the sole owner and he cannot give what he does not have, the '*nemo dat quod non habet*'. Principal member cannot act alone; his action will be void as decided in *Usiobaifo v. Usiobaifo*.²⁸ If done by family head alone, the Supreme Court has decided it voidable in *Ekpendu v. Erika*,²⁹ but extended it to be outright void if sold as his own personal land in

²¹ Lord Haldane in *Amodu Tajani v. Secretary of Southern Nigeria*. [1912] 2 AC 399.

²² Jameel Idris, *Understanding Nigerian Land Law*, 2nd Edition. Zaria: ABU Press 2008 at page 14.

²³ Adefi M.A. Olong, *Land Law in Nigeria*. 2nd Edition. Malthouse Law Books 2011.

²⁴ [1908] 1 Lagos Law Report.

²⁵ [2003] 3 NSCQR @ 279.

²⁶ [2008] 18 WRN 187.

²⁷ [2006] 340 all FWLR (1152).

²⁸ [2005] 3 NWLR (913) 665.

²⁹ [1959] 4 F.S.C. 29.

Adejumo & 2 Ors v. Ayantegbe.³⁰ Land is recoverable when the sale is voidable at the instance of the affected family member as held in *Usiobaifo v. Usiobaifo (supra)*, although such a person must act timorously and not exhibit acquiescence for 10 or 35 years as was the case in *Animashaun v. Onyekwuluje*.³¹

It can thus be gleaned that for an immigrant to obtain communal land by lease and even more by outright sale, he must be diligent, not only to meet and negotiate with the right owners and the head of the family, but also must ensure to obtain the support and consent of family members or stand the chance of having a defective and void title. This herculean procedure tends to set back the opportunity and narrow the chances of a visitor to access land resources, especially where the head of family or community is not inclined to the interest of the settler. This is an expression, thereby of discriminatory practises in access to land resources by the activities of communities, although the rationale is to preserve land for judicious use by all including future generations.

3.4 Community Service and Political Leadership

Certain visitors or foreign settlers in many communities in Nigeria have either, by their long duration of stay and usually, quality of involvement in the community affairs³² or by actual willing registration process, become part of their host ethnic group,³³ earning for themselves a good standing where they can seek to serve the community in more formal and elevated capacities as community leaders, councilors or government representatives, especially when they are knowledgeable on certain fields or aspects of endeavour that ultimately aids the community. *Bello, JSC* had in *Yinusa v. Adebusokun*³⁴ observed that ‘*the test (for integration*

³⁰ [1989] 3 NWLR (110) 417.

³¹ *Supra*.

³² For various reasons-beneficial importance of such involvement of same involvement on their business concern or sheer patriotism and love for their host communities.

³³ *Olowu v. Olowu (supra)*.

³⁴ [1968] NNLR 97.

*into new ethnic group) is whether it can be established that as a result of the settlement, the settler had merged with the native and had subsequently adopted their ways of life and custom'. However, the practice of ethnic discrimination foils any good that may arise from this opportunity, when the people insist it must be their ethnic tribesperson, even if he only answers to the name and has never been resident nor in any meaningful association with the given community. The case of *Hon. Justice Ikpeme* is a classical example, where the House of Assembly's refusal to confirm her nomination as substantive Chief Judge of Cross River was on the basis that she was from another state, indeed an ethnic group outside the state. It is interesting to note that 40 years as Director of Public Prosecution and work in both the Ministry of Justice and as a Judge, was not considered to confer a good standing by long duration, quality involvement and even registration to become naturalised by virtue of her marriage to a man from Cross River state. All that was in focus was the discriminating factor with ethnic and indigeneship coloration that she must not become head of the judiciary. This is to say the least unhealthy for any meaningful and progressive society, committed to steady meaningful development. Many and indeed, a growing number of states have gradually risen above these ethnic sentiments in its political appointments, and elective positions. Lagos, for example champions this cause, with regard to capacity to deliver on the mandate and bring the wealth of experience to bear, for the development of society, as against, the ethnic bigotry in its elective positions and political appointments,³⁵ coupled with the fact that it has a large settler population. The mere fact that it boasts of highest non-ethnic discriminatory economic, social, and political climate, gives a good account of its unparalleled development, with its legal system ahead of other state in terms of technology and modern practices.*

3.5 The Farmer-Herder Crisis as a Catalyst to Ethnic Discrimination

³⁵ Lagos has the highest number of non-indigene members of government in different positions.

In the midst of the Farmer-Herder crises, which has taken an unprecedented turn in Nigeria in recent years, a sabotaging and destructive sect of the Fulani herdsmen of the extreme North Eastern Nigeria have engaged in wanton clashes with farmers and brazen destruction of farmlands, through the North-central to the Southern-western parts and more recently, making inroads into the south southern and south eastern states of Nigeria, killing farmers repeatedly on several occasions in their farms, trespass and arson upon the farmland or grazing upon, with their cattle, on cultivated farms and tended crops, and with great impunity. The matter is further compounded when the rather kid's glove treatment given to the issue by the Central government who seem unsatisfied with the action of a the southern State governments³⁶ in banning open grazing of cattle within the southern region³⁷ because of the great economic loses, political tension and social distrust amongst the Nigerian people, which has resulted. Security of lives and property, has all the more, become a national issue in need of not just urgent but lasting solutions, to the many facets of the challenge. While it is recognised that the herdsmen have a constitutional right to freedom of movement as citizens in any place within Nigeria, such 'Human rights' do not extend to their cattle nor to unauthorized entry upon and destruction of farmers and community lands and agricultural plantations, for the rights of one person starts where another party's stops. This destructive sects have thus created a situation of mutual distrust between people of ethnic groups in the

³⁶ The Governors of the Sothern western, South eastern and South southern states of Nigeria converged at the Government House, Asaba, Delta State on the 11th of May, 2021 under the aegis of the Southern Governors Forum, where among other resolutions, they reaffirmed their resolve to ban open grazing of cattle in any state within the region, as well urge the federal government to enable the establishment of modern ranches for interested states: *The Guardian Newspaper*, 12th May, 2021. www.guardiannigeria.org.

³⁷ The Minister of Justice and Attorney General of the Federation, Mr. Abubakar Malami, SAN had in an interview granted to Channels Television Network program *Politics Today* on Wednesday 19th May, 2021 expressed the displeasure of the presidency in the action of the Southern governors in banning open grazing within their region, asserting that it violated their constitutional human rights of the herders to freedom of movement comparing the action of the governors as akin to the Northern Governors placing a ban on trade in spare parts of automobiles (a dominant trade of the people of South East) in the Northern region, which statement has generated a lot of backlash as not correlating, unbecoming of a Justice Minister and insensitive to the quantum of destruction the activities of the hersmen have caused, including responses from the Governors of the Southern region and senior advocate, Mr. Femi Falana, SAN. Premium Times News paper: '*Ban on Open Grazing by Southern Governors Unconstitutional*'. May 20th, 2021. This subtly reflects underlying ethnic loyalties that shape the Nigerian polity.

country with the North-south dichotomy, taking centre stage and affecting people ,who should ordinarily be referred to as ‘Genuine Fulani Herdsmen’, who are people loving and respectful towards host communities, now being discriminated just because they are Fulani. The *Shasha market clash in Ibadan, Oyo State* between the Yoruba and Hausa ethnic group, where the consequences of the action of select extremist Fulani herdsmen became the basis of application, a blanket application at that, of unlawful force on everyone who comes from or is associated, with that region of the country highlights the issues. This is another manifestation of ethnic discrimination at its extreme.

Whilst all these are going on, deep and decisive regard, for whatever is left of the right to freedom from ethnic discrimination in Nigeria should be applied to all and sundry, especially communities with genuine immigrants and settlers, whose lives and business concerns have been adversely affected, so that a major crisis or civil war, at its worst does not result.

3.6 Regional Ethno-Religious Policing Activities: The Sharia Police

Sharia law is regarded, within the laws of Nigeria as religious custom, recognised in the Northern Islamic customary law for the Northern states of Nigeria. With over 400 ethnic groups and several religious sects which conflict has mainly featured in their several religious sects which conflict has mainly featured in their contact with each other. Nigerian ethnic militias like *the O’dua People’s Congress (OPC)*; the *Bakasi Boys*; the *Movement for the Actualisation of the Sovereign State of Biafra(MASSOB)*; the *Miyetti Allah*,³⁸ religious intolerance and ethnic clashes have been heightened, especially now from the turn of the turn of the new millennium.

Recently, several regional security outfits have been constituted and inaugurated to man the security of their various regions, which challenges the central structure of the Nigeria’s internal security architecture, which the Nigerian Police Force represents, the ‘*Amotekun*’

³⁸*Daily Trust Newspaper* (Nigeria, 26 May 2002) page 16.

corps for the Yoruba states of south western Nigeria; the *'Ebube Agu'* security outfit, by the state governors of the southeast.³⁹ The northern region has had several states create their security outfits like Kaduna and Zamfara states *Sharia* police; Kano *Hisbah*; and all with link to Islamic religion. The mere fact that these regional police architecture are ethnically and religiously tied already creates ab initio, a likelihood of segregation, preference and divisive activities, especially negatively affecting the persons who do not share such ethnic affiliations or religious persuasion, which are antithetical to freedom from discrimination.

Moreover, these regional outfits may be well within civilized practices as obtainable in other democratically constituted countries like the U.S.A., where state police is well recognised and in full practice. However the laws which these religious and regional outfits must apply and enforce, must be those that are in tandem with the constitution of Nigeria,⁴⁰ as well as state practice and generally accepted democratic and civilized principles like fair hearing and proper trial, as against any, arbitrary and draconic laws which will infringe on the citizens' right to dignity of the human person, right to life and ultimately freedom from discrimination. Thus, the activities of the sharia police which, draw their operational laws from the Islamic sharia law, which is sectional, religious, and ethnically inclined, is segregating, and discriminatory, to state the obvious, as such laws are not approved for application nor indeed applicable to all regions of the country. What is more, provisions of these laws are at times at variance and beyond the scope of the constitution, which is the grundnorm or outright inconsistent with its provisions or those contained in other federal legislations. Such practices as the cutting off of a hand or limb of an alleged thief (whose trial may have likely breached the criminal trial procedure provided in the Administration of Criminal Justice Act (ACJA) 2015, formerly Criminal Procedural Code (CPC)), or for one to be executed who

³⁹ The *Nnamdi Kanu* led secessionist Indigenous People of Biafra, had inaugurated their own Eastern Security Network (ESN) prior to this for the same region.

⁴⁰ Constitution of the Federal Republic of Nigeria, CFRN 1999.

'blasphemes' against the Holy Prophet or Islam, as has been the sentence given severally against several persons in the north⁴¹ or the arrest of persons who bear or offer haircut services that give people such prohibited haircuts, or consumption of drinks with alcoholic content, especially southern people, who reside and are settled in the north who do not share that persuasion is squarely manifestation of ethno-religious discrimination.

⁴¹ Kano state has recently sentenced a youngster to death for the 'crime of blasphemism' against Islam at the Sharia court, for which appeal to the Sharia Court of Appeal upheld the trial decision.

CHAPTER FOUR

DISCRIMINATION BASED ON THE CONCEPT OF INDIGENESHIP

This aspect of the work examines the concept of indigeneship, as another tool for discrimination and denial of privileges and opportunities, its implications and practical manifestations in Nigerian affairs.

4.1 The General Concept of Indigeneship

Indigeneship comes from the root word 'indigene' which means a native or indigenous person when used in relation to a given socio-culturally and politically organised area. Other words as aborigine, local are associated similar words.

Indigeneship is the status of being an indigene, a native status. Indigeneity, indigenisation are associated concepts. It is a natural link between a person and a geographical location- his ancestral home where he traces his roots through a blood lineage and genealogy that puts him in contact with his kin and kindred.¹ Although the Nigerian law, allows its citizen to live and work or carry on economic activity, as well as own property, in any part of the country they choose,² the reality in practice in Nigeria shows that diverse means of identification and socio-political, as well as socio-cultural standards are employed by acclaimed 'aborigines' of a given place in the application of the implication of these laws.

An indigene of a given place, may be categorised in cultural affiliations, an ethnic group. For example, a *Bini*³ indigene entails one who traces his ancestral home through blood lineage and parents to the Benin kingdom or a Scottish aborigine, who identifies with the ancestry of the Scott in the United Kingdom. It could be also on a socio political basis. Such a *Bini* man in our example above, can identify as a south southerner or an Edo state indigene on a state basis in Nigeria. However the classification, the common factor is that one identifies himself

¹ Joseph Dangme Rinyom: Indigeneship, Citizenship and the Lost Nigerianship, An Unpopular Essay.

² Sections 41 and 43, Constitution of the Federal Republic of Nigeria, CFRN 1999.

³ The name of the major ethnic group found in Edo state, South-South Nigeria.

with a definite and discernable people who are culturally, historically, or politically linked in a given geographical location.

4.2 Nigeria's Definition of the concept in law and practice

The concept of indigeneship has been recognised in Nigerian laws and is actually referred to severally in different quarters in arriving at decisions and certain general processes. Although the Nigerian Constitution does not provide a definition for the concept, it touches on the same when under section 147,⁴ it provides for the appointment of ministers by the President subject to the confirmation by the senate.⁵ In the proviso to subsection (3), the appointment must be made with each state represented by at least one person who must be an indigene, (emphasis mine) of the state. Section 147 is here reproduced,

Section 147(1) – (3) *There shall be such offices of Ministers of the Government of the Federation as may be established by the President.*

(2) Any appointment to the office of Minister of the Government of the Federation shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President.

(3) Any appointment under subsection (2) of this section by the President shall be in conformity with the provisions of section 14(3) of this constitution:

Provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each state, who shall be an indigene of the Such State.

There is however, no definition for who an indigene is under the definition section of the Nigerian constitution,⁶ nor indeed any other part of the constitution. However, in the *Federal Character Commission (FCC) Act*,⁷ under section 10 of the Guiding Principles of the FCC provides a definition on the Local government indigeneship, thus:

⁴ Constitution of the Federal Republic of Nigeria, CFRN, 1999.

⁵ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Section 147 (2).

⁶ CFRN, 1999, Section.318 titled: Interpretation, Citation and Commencement in Part IV.

⁷ Decree No 34, 1996 which has been adopted in the Laws of the Federation of Nigeria 2011.

'An indigene of a Local Government means a person

i) either of whose parents or grandparents was or is an indigene of the Local Government concerned or

ii) who is accepted as an indigene by the Local Government , provided that no person shall lay claim to more than one Local Government'

From subsection (i), it is clear that a person is either an indigene or not based strictly on whether his parents or grandparents come from same area as indigenes. He does not have any positive contribution in the realisation of this conferred status. While **subsection (ii)** gives room for acceptance of people by local government, but lays down no criteria or process for the local government to award indigenship to any party, leaving it open for various local interpretations and ethnic and religious biases for which has become the norm in Nigeria, even in formal settings.

In Nigeria, indigeneship connotes persons known in a community, not only as an individual, but perfectly also a part of a family, household, and other social institutions like the age grade that can denote trustworthiness. The members of the community, being the native, whose ancestral origins can be traced back to the given native area are so regarded as indigenes. In the absence of such strong ancestral or family connection, ethnicity and religion can also form alternative conditions for belonging and acceptance. *'If you are a Muslim and speak Hausa, you are assumed to belong here'*,⁸ is a vivid example of what obtains in a given Northern city. This discourse obtained even in pre-colonial times, when ethnic/linguistic assimilation of non-Hausa into Kano- Hausa allowed mostly Islamic immigrant communities, such as the Nupe and Kanuri, to become assimilated into the metropolis as fully integrated

⁸ This was quoted in an interview of Bala Muhammad, Kano State Social Re-orientation programme, A. Daidaite Sahu Kano, 22nd October, 2008.

Kanawa.⁹In fact, several wards in Kano's old city are famous for their assimilated inhabitants.¹⁰

After colonial periods, ethnic cleavages have created different classification of the Nigerian people- The large regional 'wazobia' distinction, which depicts the Yoruba, Hausa-Fulani, Igbo and other minorities classification; then the military creation of states where people identify with various states where their division falls as the state where they come from; and the state-bordered and limited ethnic affiliation, where even though a person is Yoruba, he is not the 'Ilesha Yoruba' found in Osun state, for example as a basis for segregation. Even within the same state and ethnic group, there are family and clan segregations. The Benin Kingdom, for example has several family groups which exchange peculiar greetings that depict which family a person comes from. These are fertile grounds for ethnic discrimination. It is observed that wherever ethnic segregation/ indigenism discrimination abounds, merit as a quality is often less honoured. It is at the point where one intentionally wants to ditch these more desirable and just goals that ethnic sentiments are whipped up. The practice in Nigeria is that ethnic segregation and discrimination based on indigenism is usually resorted to, more often than not, when other more acceptable qualifying standards have been ditched and one wants to cut corners and jump the gun, where one whips up ethnic and religious sentiments and emotions over reason. For example, recently, the Honourable Minister for Communications and Digital Economy, *Sheik Dr. Isa Pantami*,¹¹ was in the news for comments he made some 20 years ago, in sympathy with terrorism and terrorist activities. The effective call for his resignation or alternative sack and the argument against it,¹² have since turned ethnic and religious, instead of considerations and probe into the merit of the

⁹ The native name for an indigene of Kano.

¹⁰ Tudun Nupawa for example.

¹¹ In the President Muhammadu Buhari led 2019 to 2023, 2nd tenure administration.

¹² Early in March and April 2021, on major social media platforms and news houses like twitter hash tags and protests.

allegations and marching actions, thus dividing the country into the extreme Northern Muslims and Southern Christian sides.

Nigeria's notion of ethnic identity has become increasingly primordial and ethnic assimilation, particularly across the 'wazobia' cleavage, all the less common.

The implementation of indigene-ship has been through the 'Indigene-ship certificate' issued usually at the local government level.¹³ Although no constitutional basis for these certificates, they have in practice become material proof of one's status as an indigene of a local government and a state by extension, usually, employed for application procedures, military or other federal and state organs recruitment and promotions, admissions and educational scholarships in higher institutions, political positions and almost every formal applications and documents. This shows how much the notion of belonging to and allocation of indigeneship affects the distribution of associated social, economic and political opportunities. Therefore, indigeneship in Nigeria, when the constitution is considered,¹⁴ the Federal Character Commission Act,¹⁵ and the practice of issuing indigeneship certificates on local government and state basis, indicate that indigeneship is defined in Nigeria on state and local government basis.

4.3 Implications of Discrimination based on Indigeneship

Discrimination based on indigeneship goes hand in hand with ethnic sentiments in practice in Nigeria. Such concepts as the 'political correctness' language, where one has to do something ordinarily in breach of good reason and appropriate procedure just to be in sync with prevailing political power controllers, which is determined usually by electoral population of a particular region or loyalty to some bigwig cabals or political class. Truth is diluted to suit the desires of some political interests so that political fireworks and rivalry do not result.

¹³ And state level at other times. Kano state's Guidance and Counseling Board (GCB), has also begun to issue state indigeneship certificates for example.

¹⁴ The only mention in Section 147 of the Constitution.

¹⁵ Section 10 of the Federal Character Commissions Act.

Merit, qualification, capacity, capability is ditched. The best man does not get the job where, for example, he is not an indigene of the state. The country slides on a downward slope and slower development pace until the 'indigenes' develop and are ready to possess the extant necessary qualities. The system rot is only better imagined.

With the reign of discrimination on the bases of indigeneship, citizens will not be able to enjoy full rights to live and work anywhere, as guaranteed in the constitution.¹⁶ Where increasing number of certain positions and jobs are reserved for indigenes. Contracts will not get to qualified contractors, who are not indigenes. The *Justice Ikpeme treatment*¹⁷ will continue to hold sway.

What is more, the mutual distrust, brewing jealousy and outright hate, disunity and indeed segregation, unnecessary and excess fragmentation and cultural fraternity for self-preservation will increasingly be projected. Children are, for instance taught to distinguish one person from another based of tribe, clan, or family differences, not for the sake of appreciating diverse nature of Nigerian society but to carry on the ethnic and indigeneship discrimination for which practice, our society entertains.

Ethnic clashes, threats of secession, xenophobia, ethnic cleansing, and civil war, at its worst results in consequences, of this form of discrimination. Protests, violent demonstrations, and physical altercations always brewing in the minds of oppressed groups, where discrimination is existent all show the problems.

Some odd situations will continue. Hon, Justice Ikpeme will not become Chief Judge, Rt.Rev, Okpalaeke will not be bishop.¹⁸ Non indigenes will not qualify as Vice Chancellors in universities (including Federal Universities) where they are not indigenes. The best contractor

¹⁶ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Section 38 and 43.

¹⁷ See chapter one ,Item 1.7 of this work.

¹⁸ The story of the rejected Catholic Bishop of Ahiara Diocese because he was no indigenous priest of the said area, even with the intervention of the Papal See. He was later relocated out of the diocese to Ekwulobia where he became substantive pioneer bishop.

will not win the contract bidding, but the one who is indigene. Recruitment and admissions processes in government institutions will remain controversial.

A discriminatory economy will be retarded in development. Healthy economies thrive on the integrity of merit and qualification as against parochial considerations like place of origin. Recently, the Canadian Government invited for the immigration of professional immigrants, not just to make useful, the vast land area, left to fallow within the country but to build the economy of the North American country. The media especially in Africa was similarly, awash recently with the news of the appointment in the Alberta province of same country of a Black African Minister for Justice, Nigeria's Mr. Kelechi Madu as the first of its kind. A nation that thrives on indigeneship discrimination between persons and tribes and sub tribes will continue to be projected and consequences of the excesses will only be brewing.

The list will be endless of the negative effects of this practice.

4.4 The Indigene- Settler Question in Nigeria

An indigene is a native, an aborigine to a homeland, as against a colonial population or a settler. Merriam Webster Dictionary renders it as a native. It associates such words as autochthon, aborigine with the concept as synonyms. They are regarded as dwellers in a given place without any history of migration, they are deemed to be 'owners' with respect to a defined geographical and socio cultural area.

A settler is a person who has migrated to an area and established permanent residence there.¹⁹A settler who migrates to a previously uninhabited place will be described as a pioneer settler. He will appear to be an aborigine to some other settlers who may arrive at same location after many years. Settlers are generally inclined to a sedentary culture, as against nomadic cultured people who move to different settlements seasonally ²⁰Settlers have been associated with the intention to 'colonise' the given location and sack the dwellers, where

¹⁹ Google.edu sources accessed on 3rd May 2021.

²⁰ Ibid.

they have arrived at.²¹ However, the veracity of this assertion varies from place to place and to different degrees. While colonizing settlers were obtainable in the past, integrating settlers more contemporary. In Nigeria, the Fulani tribe, although a people of nomadic culture have been held in history²² of the country to have invaded and overrun political authority in the areas they conquered and changed the culture therein and institute their own *emirs*²³ as against the *Habe rulers*²⁴ of the original Hausa people²⁵ starting from the North western Sokoto caliphate across to the North eastern Kanem-Bornu empire and Kano, down through the Niger and the Middle-beltan North central region to Ilorin province where they were resisted from further southern invasion, only after they had conquered the Ilorin people. They therefore portray an example, an impression of settlers that have indeed colonized their new settlements. Yet, the descendants²⁶ are nomadic going from place to place with their cattle without laying claim to any particular homeland.²⁷

While for other tribes, in a majority of the southern parts of Nigeria are also settlers in other different regions of the country, who arrive at different places with or without the intentions to permanently settle there, have their businesses and commercial or corporate concerns which they carry out as well as buy lands to establish estates, pay their taxes and government rates, etc, not in a bid to dominate the or colonize the culture or political leadership of their new found place, but to be integrated into their new communities, observing prevailing local laws and with the advance of years and longer stays participating in the socio-political definition of their host communities. Thus, it will not be surprising to find many Yoruba

²¹ The activities of the 1850 medieval settlers, who arrived in Iceland for example.

²² The 19th century Usman Dan Fodio Jihad.

²³ The title for Fulani traditional stool.

²⁴ The aboriginal hausa leaders.

²⁵ Africa and the Wider world, Volume 1.; *A Nigerian History*.

²⁶ Present day Fulani tribe, predominantly herders.

²⁷ Although there are accusations and counter accusations of the activities of colonising herdsmen at the Benue valley, present day Benue State.

traders in Kano markets or Igbo artisans in *Alaba International Market*²⁸ who do their work, trade, make investments, pay taxes and dues and acquire real estates and live therein, such that they can be recognised to be found in a definite traceable location and permanent residence.²⁹ They can be described, in Nigeria's context as the settlers while the people who lay generally accepted ethnic, historical and ancestral claim to the land as owners, can be called the aborigine-indigenous population.

In modern day Nigeria,³⁰ people who are not aborigines of a given place (state, cities and towns) but have migrated there either, for white collar jobs or businesses³¹ or commercial concerns that sprung up in such places, can be recognised as settlers. They are also people, who due to the political and government process of creation of regions and states or division of already created states into two or more states by both civilian and military governments,³² have been dislodged from what used to be their states and become settlers because, at the time of the new state creation or division of the states into further states, they lived in a part of the old state which fell into a different state from the place where their home town was grouped in the new state. Old Anambra state for example was a combination of what is now Anambra and Enugu states until the 1991 states creation. Therefore, a lecturer, for illustrations, who was employed, at the University of Nigeria, Nsukka (which fell into present day Enugu state), but hails from *Uga* town in Aguata local government area, which fell into the new Anambra state, will now gain the tag of a settler and be treated differently, because

²⁸ A popular Lagos market.

²⁹ Although many, especially settlers from the south eastern parts still hold dearly to their home towns which they visit regularly, usually at least once a year.

³⁰ From the 1960 declaration of independence and especially after the civil war that ended in 1970, through the civilian governments and military intervention that interrupted them, up to the return to civilian government in 1999 and the turn of the 21st century.

³¹ Could be federal government jobs or organised private sectors and NGO's employees transferred to work there.

³² 1960-3 regions Eastern, Western, and Northern; 1963 addition of the Mid western region; 1967 fragmentation into 12 states; 1976, further into 19 states; 1987, 21 states; 30 states in 1991 and present 36 states structure made in 1996.

he no longer is from same state as where he works, nor will his children be exempted from the harshness of the discriminatory practice. This was exactly the case with Hon. Justice Ikpeme. Her father had also worked, lived and married a Calabar woman in Calabar with his family, as an indigene of the Old Akwa Ibom state.³³ However, he had been turned to a settler, when the old Akwa Ibom state was divided into Cross River and Akwa Ibom states³⁴ and his hometown fell into the new Akwa Ibom state. When his daughter, (the Hon. Justice Ikpeme) has now grown, married to and worked in Calabar, where her father where her family remained, worked and retired (as permanent secretary), even after the state creation, she is regarded as a 'settler', who will be 'security risk'³⁵ if made Chief Judge, since her father's hometown is in Akwa Ibom state.

This clearly portrays that status of an indigene is measured on a state basis, (although people still talk about village, town, and regional indigene-ship) as the common standard to determine who an indigene is. The constitution of Nigeria,³⁶ although silent on the definition of an indigene seemed to support this position, when it provided under **section 147** for the appointment of Ministers for the government of the federation, who among other qualifications and processes must be one person from each state who must be an indigene 'of that state'³⁷

4.5 The Indigene- Settler Question and Citizenship

The constitution provides a right against discrimination³⁸ and the rights of citizens to enjoy full benefits of citizenship in any part of the country they find themselves or choose to live.³⁹

³³ Then present day Cross River and Akwa Ibom states.

³⁴ In 1987 military decree.

³⁵ The words used by some members of the Cross River State House of Assembly to describe Justice Ikpeme's nomination. Full account of the issue, in item 1.7 in Chapter 1 of this work.

³⁶ Constitution of the Federal Republic of Nigeria, CFRN, 1999.

³⁷ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Proviso to section 147(3).

³⁸ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Section 42.

³⁹ Constitution of the Federal Republic of Nigeria, CFRN, 1999, Sections 34 and 38.

Who a citizen is, is defined under sections 25, 26 & 27. Practically, anyone born within the country, whose grandparents or parents, etc traces their history to Nigeria is a Nigerian citizen, but not everyone given birth to in a state⁴⁰ is truly regarded as a bona fide Nigerian in that state.⁴¹ This gives birth to the settler –indigene lexicon in the political vocabulary of Nigeria. The constitution, which is the grundnorm from which other laws draw their validity, within the legal system. It is finality on any matter over which it makes provisions, further complicates the already controversial practise when it frowns at discrimination in section 42, but upholds indigene-ship recognitions on a state basis, which allows the indigene-settler squabbles to confront the Nigerian federalism. Indigene principle appeared in a *Native Authority Law 1954* as ‘someone whose genealogy can be traced to particular geo-ethnic space within a local council or state in which he/she is resident’⁴² and non-indigene, settler or stranger is a native who is not a member of the native community, living in the area of its authority. An indigene is one who claims to be the ‘son’ of the soil, a recognised citizen of a given space while a non-indigene or settler is a stranger, a migrant who does not have the rights of occupancy.⁴³ Being born within Nigeria, or being naturalised or conferred with the status of a citizen can guarantee Nigerian citizenship, but does not offer actually the status of an indigene. Thus people, who may have migrated and lived in a certain place for over 3 to 4 decades are still addressed as settlers and are discriminated from their rights and privileges as citizens.

The *Federal Character* principle⁴⁴ fetches average to leadership positions, tends to encourage denial and discrimination among Nigerians. The constitution is duplicitous in dealing with

⁴⁰ The 2nd tier of government in Nigerian Federation.

⁴¹ International Journal of Science Technology and Management. Vol N08, Issue No12, December 2019.

⁴² International Crisis Group Africa, 2012.

⁴³ C. Ojukwu, and C.A. Onifade, *A Deadly Cycle: Ethno-Religious Conflicts in Jos, Plateau State, Nigeria*. 2010.

⁴⁴ Principle, which became recognised in the 1979 and 1999 constitution. An affirmative action on the recognition of ethnic representation in public offices, admissions, education, recruitment and promotions.

the indigene-settler question. It espouses universal criteria for Nigerian citizenship but also recognises indigenes for the purpose of appointment of Ministers.

In daily existence, residency is discarded in favour of indigene-settler dichotomy. It underscores the nature of one country, citizens with different structures of opportunities, not because of any objective criteria but due to ethnic origins, which probably explains why previous explains why previous peaceful co existence between ethnic and religious groups, before the advent of colonial rule is now devastated by regular bouts of violence. Indeed, the problem of citizenship in Nigeria largely stems from the discrimination and exclusion meted out to the people on the basis of ethnic, religious and gender identities. This according to them, is because those who see themselves as ‘natives’ or indigenes exclude those considered as ‘strangers’ from the enjoyment of certain rights and benefits that they ought to enjoy as Nigerians, living within Nigeria, upon the fulfilment of certain civic duties, such as the payment of tax. The inability of the federation to evolve a legal frame work that would effectively resolve the uncertainties, surrounding citizenship and the ethno-religious, communal, and political conflicts that have in immense proportions posed, serious threats to the unity, peace and national development has been explained by some scholars ⁴⁵in the *Marxist Conflict theory*. One of Marx’s main assumptions is that the emergence of modern state has reproduced irreconcilable differences among men and made conflict inevitable. This is so because the state has created different classes with political deviations. For instance the *Wukari* ethnic crisis, the *Tiv-Jukun* that is; the *Ife-Modakeke* crisis; the *Aguleri- Umuleri* crisis in Anambra state and indeed the citizenship, indigeneship-settler crisis in Nigeria cannot be divorced from colonial policy of divide and rule, consolidated by post colonial elite drive to exploiting ethno-religious gap for political reasons and to sustain class competition among the various ethnic elite groups.

⁴⁵ Adesoji and Alao *Settlers-Indigenes Question in Nigeria*. European Scientific Journal. Vol. 13. April 2017.

The struggle by different ethnic nationalities over scarce national resources has necessitated the manipulation of indigeneship and citizenship issues by individuals and groups to gain political and economic advantage and to exclude others. The attempt by those excluded to assert or integrate themselves into the mainstream of social, economic and political life of their community against the resistance of those at the mainstream has been the major factor explaining most of the ethno-religious and communal violence in Nigeria. Lands, education, employment/economic and political opportunities are some of these resources at stake.

The story is told of one *Alhaji Ismail Babatunde Jose*⁴⁶ to depict the futility of attempts to rigidly define indigeneship as the idea of ethnic purity is illogical and impracticable to qualify persons access to resources, as against citizenship. *Alhaji Jose*⁴⁷ in his genealogy was first traced to *Ikare-Akoko*, where his grandfather was born and later to *Ijebu Ode*, where his grandfather got married to a royal family. His genealogy was also traced to *Sokoto* and *Bida*, roots of his great grandmother and grandmother, respectively and finally *Lagos*, where he (Ismail) was born. Also his grandfather's residency at *Calabar*, where *Hamsa Jose*, his father was born was considered relevant. Pertinent questions raised here will be if: *Alhaji Jose* is an indigene or settler in Lagos? (where he was born); Does he have a legitimate claim to *Owa-Ale* chieftaincy title in *Ikare*? Can he embrace or be embraced by the royal household of *Ijebu Ode*? Can he be discriminated against by the *Nupe* or *Fulani* on the grounds of ethnic identity or indigeneship? For Adesoji & Alao, he deduces from here that there could be multiple indigeneship. It is therefore best to emphasize Nigerian citizenship, as against the indigene-settler syndrome. The ugly sides of this unhealthy practice is well illustrated in the *Tiv-Jukun crisis* that has risen in different multiple shades of clashes, since after the colonial amalgamation of 1914. *Tiv and Jukun* constitute the population of *Wukari Local Government in Taraba state*. They had lived peacefully together, since the pre-colonial days with the *Tivs*,

⁴⁶Unclear as to whether hypothetical or real event as Sourced in the Journal of African Studies.

⁴⁷ In the x-ray of his genealogy by Raji Oyeweso 2006.

as migrants to *Wukari* areas. They are rural farmers, predominantly who did not interfere with the *Jukun* socio political administration. The *Jukuns* traced their ancestral origin to *Wukari*. Although the *Tiv* had arrived in the region far back, as the 1840s in the 19th century, when the present *Wukari* was established, political and social relations began to change for the worst in the early 20th century. The reason advanced for the change in relations between these two ethnic groups are the introduction of party politics and increase in the population of the *Tiv*.⁴⁸By the 1940s, the *Tiv* were not only the largest ethnic group in the middle belt but they were three times more numerous than the *Jukun* in the *Wukari* area, which the *Jukun* considered as their homes.⁴⁹The *Jukuns* thus started to impose their political supremacy and this was the beginning of settlers-indigene dichotomy in Taraba state, where the *Jukuns* regarded the *Tivs* as settlers, despite all colonial governments endeavour to recognise the *Tivs* as part of the society , where they lived, especially with the political reversal of fortune suffered by the *Jukuns* at different times woke them from their slumber and they became more rigid in denying the *Tivs* access, relevance , entitlements, political participation and power on ground that they were settlers. Violent clashes have resulted. Discrimination based on Indigeneship is Ethno political while that based on ethnicity is inclined to be ethno religious. Examples of the ethno-political crisis in Taraba includes:

- i. Tiv Riot 1950-60
- ii. The 1964 *Atem tyo* 'head breaking'
- iii. the 1979-83 fracas
- iv. the Local Government election crisis of 1987 and 1990- 92
- v. the clash of 2001-2002
- vi. the August 2010 riot
- vii. and more recently the 2019 crisis.

⁴⁸ *Focus on Central Region Tiv, Jukun clashes*, The New Humanitarian Conflicts Reportage. October 2001.

⁴⁹ *Ibid.*

Contention has always been on rights or privileges meant exclusively for those who trace their ancestral origin to Wukari. *Dr. Shekarau AngyMasa –Ibi Kuyo II*, highlights the Jukun sentiments when he said during the 2001-2002 *Jukun-Tiv* clash that;

‘they(the Tiv)came here to farm; we (the Jukun)allowed them, gave them chieftaincy titles...Now that their population has increased, they believe they are many enough to colonise us’⁵⁰

While the *Tivs*, like many settler groups in different parts of the country, have consistently maintained that having settled in a place for long periods, it is not proper to refer to them as settlers, but indigenes. They acknowledge that while other people of same tribe as they are located elsewhere,⁵¹ they could not properly trace their roots, nor fit properly into the old society they (their forbearers actually) left several years ago, they have essentially become integrated into their new found home that they cannot go back. If citizenship were more esteemed and emphasized upon than indigene-ship, this crisis, among many others like the *Ife- Modakeke*, will not be told and retold, because they always re-emerge from time to time.

It still behoves to ask, what are the chances that this, as other confrontations will not reoccur?⁵² *Justice Ikpeme’s* case was in 2020 and such other previous such cases of resistance of a Chief Judge based on their association with their states based only on marriage⁵³ or is it not fact that we live with these biases and that they will be with us for a little long.

Notwithstanding, it has been argued that the problem for Nigeria is not cultural nor geographical, nor social, nor economic, but the difference between various ethnic groups in

⁵⁰ As quoted by traditional ruler of Jukun community in the work of A. Asuni, *The Tiv-Jukun Crisis*, 2003.

⁵¹ The Tiv people found originally in Benue State.

⁵² The latest incidence being the 2019 clashes.

⁵³ Examples have occurred in the past with Abia, Ogun, and Kano.

Nigeria, which rouses ethnic question is the degree to which are diverse identity has been manipulated⁵⁴

It is therefore recommended that the National Orientation Agency and indeed the Federal Government take the national orientation of Nigeria as a matter of paramount importance, first by making clarifications on the intentions of National coverage and ‘Indigene of that state’ stated in Section 147(3) proviso for the appointment of Ministers. The ethnic posture of Nigerians will always causes distrust, tensions and unrest, clashes and outright war⁵⁵ with continuous and aggressive national re-orientation. Special laws for ‘indigenes’ discriminatory to other ‘settlers’ should be expunged and liberty of citizens to live, work, and thrive anywhere in Nigeria should be upheld in its through essence.

4.6 Formal Requirement of State of Origin in Formal Settings

Under the kind of based on indigeneship against persons, which as has been pointed out to exist in different levels at community, town, local government or state levels⁵⁶ and the just examined indigene- settler issue, we have the state of origin requirement, usually in most formal documents .⁵⁷ It permeates every single database requiring sector. In the educational sector, candidates in search for admissions and registration for examinations, special grants, scholarships, etc cannot pass without readily providing this detail as well as others, such as names, residence, contact phone number, and the like.

In the economic sector, application for some jobs or postings and transfers, enlistment in the military, company directorate and indeed all bio-data requiring arrangements. These and other requirements are not undesirable as they are in fact, necessary for identification,

⁵⁴ Nnoli Okwudiba *Ethnic Politics in Nigeria* (Fourth Dimension Publishers, Enugu 1978) .

⁵⁵ The 1967-70 civil war in Nigeria for instance.

⁵⁶ The most common formalised indirect system of discrimination, especially when the proviso section 147(3)CFRN 1999 is interpreted as supporting the practice.

⁵⁷ A school I.D card or enrolment forms, tertiary institutions application and clearance; applications for jobs of all sorts both formal and informal.

security, correspondence, acknowledgement and such other purposes. The taking of statistics and records are primarily necessary to ascertain the characteristics of any nation in reality, so as to know the way forward and bring guided and informed development and progress. It is observable that successful nations of the world regarded as developed economies do not trade lag in the recording and continuous update of its population statistics, employment rates, bio-data of its citizens, education levels and so on.

Various agencies of government handle different aspects of this all important record. In Nigeria, the *Nigerian Bureau of Statistics (NBS)*; the *Federal Character Commission (FCC)*; the *National Population Commission (NPC)*; the *Nigerian Communications Commission (NCC)*, among other agencies government and Ministries like that of Finance; Communications and Digital Economy; Labour and Productivity; Education; Trade and Investments; among others all contribute in different sectors to the collection of data of citizens, including state of origin, for the data base of the country, for information and policy direction. Therefore, this particular data, designated 'state of origin' is by no means, questionable in itself.

However, it is application to which this record has been employed by indeed the 'Federal-characterising of everything' that adorns it with a garb of discrimination based on indigene-ship. If the state of origin option segment in forms is meant to take the statistics of birth, of migration, of deaths, of history of people and such other important human development purposes is the only reason, why they are taken, then there would be cordiality and it will engender proper record and vital information for progress of the nation and security of citizens. However, if the state of origin column is extended to be used to determine, who gets what in all aspects of national (or natural resources), such as education, justice, economic gains, lands, scholarships, discounts, incentives, or licence and permissions to operate corporate organisations. It engenders unimaginable manifestations of discrimination, with far

reaching multiplier effect. It therefore, means that a citizen of same country may not be granted an education (or to certain degree), nor will a business endeavour be granted, licence to carry on business or a farmer, allocated land for agriculture purpose, because he is not 'originally from that state' where he now resides or because he is from particular state, whose quota is exhausted for the purpose. In the distribution of certain resources, should the requirement of state indigeneship not be the 'state of residence' as these are the persons who live in the given state and are most likely to be in greater need of the resources, so mentioned, as against 'state of origin' which sometimes, the people falling within this classification may either be away in great percentages from the state or disinterested in the facilities.⁵⁸ It now tilts toward unjust distribution of resources as the peculiar needs of the people, highlighted by high demand for the resource in the same area or state is not addressed, but in the name of 'equity', same is offered to others who may not have need for it. The treatment given to *Miss Badejo*, subject of the suit in *Elizabeth Badejo v. Minister of Education*⁵⁹, squarely highlights this position.

In the affairs of a state, as in the case of *Hon. Justice Ikpeme*, being a resident from birth in the state and being from state up until 1987, when Akwa Ibom State was created and still at that, having in part 'Indigeneship' through her mother and working all her life for Cross river state in different capacities. Should the state of origin limitations,⁶⁰ stall her appointment to lead the state's judiciary? Is this not a great opportunity to apply the state of residence? Imagine for instance, that in a bid to preserve the state of origin practice (which has become entrenched in many political and otherwise opportunities in Nigeria), a Judge who hails from Cross River was scouted from another state where he is employed and he is not up to date with the progress and timeline of the Cross river State Judiciary, nor meets the criteria set to

⁵⁸Dike Chukwumerije: *No culture older than being human*. TEDx Talk Abuja. 26th September, 2017.

⁵⁹ *Supra*.

⁶⁰ which ordinarily should not affect the jurist, based on her mother's Cross river origin.

be Chief judge and the whole period that will be lost before he become abreast and settles into the state Judiciary.

In reality, what was meted out to *Hon. Justice Ikpeme*, is not still the practice within the country? Would it not repeat itself over and over again in different quarters and states affairs, many times over. The former Chief Judges of Abia, Kano and Rivers state have faced similar fates. What is the unofficial requirement to be made Vice Chancellor of any state's and even federal University in Nigeria today, if not that you're an indigene of the state or host state for federal Universities. Recently when President *Muhammadu Buhari* released an Ambassadorial Nominees list, where among other persons, *Mrs Opunmi Akinkugbe* was nominated as a nominee from Ondo state. Did the political stakeholders within the state not kick against her nomination the Ondo Youth Coalition Chairman, *Ademola Emmanuel* had opined that "*Ondo state has prominent sons and daughters that could take up the appointment*". This is because she is only an indigene of the state, by marriage and herself from, *Abomina* Local Government in Rivers state.

Thus, as has earlier been opined, the state of origin; state of residence; and dual citizenship by marriage; and such other variations should be taken into consideration in the allocation of different resources at all levels of governments and affairs so as to ensure that equity is truly upheld in the allocation of different resources to persons in real need of it. This is to ensure that citizens are not discriminated against on the basis of the application of state of origin column provided for in various affairs of state and government.

4.7 The Quota System in Nigeria

A quota is a proportional part or share, assigned to each division.⁶¹ The Black's Law Dictionary renders it as a proportional share assigned to a person or group; an allotment. It gives illustrations with a University's admission policy which includes a quota for in-state

⁶¹ Oxford Advanced English Dictionary, 10th Edition.

residents. The dictionary ⁶² also defined it as a quantitative restriction; minimum or maximum number. A quota system, will therefore entail policy structures, that ensure that certain allocation of resources are channeled to planned divisions, based on different standards or considerations.

In Nigeria, the allocation of different resources is governed by different considered factors and the divisions of the country are different, for various allocated resources. Such divisions may be divisions based on states,⁶³ geo-political zones⁶⁴ and regions, agricultural belts,⁶⁵ educationally less developed.⁶⁶

Factors considered may be population density,⁶⁷ levels of literacy, environmental factors,⁶⁸ economic viability,⁶⁹ natural resources,⁷⁰ socio-legal development, and more recently, prominence of security situations and degree of safety of lives and property with the devastating activities of the *Boko-haram*, *Killer Herdsmen* and *Bandits* in the north, *militancy* in the south and *secessionist* organisations in the east.

Resources at stake for which factors are considered include educational resources; agricultural; lands; and economic resources; financial;⁷¹ and physical infrastructure; political resources;⁷² and government permission.⁷³ Therefore, the presence of federal tertiary institutions, scholarships and bursary grants, admission policies in the educational factors;

⁶² Black's Law Dictionary, 8th Edition 2004.

⁶³ The 36 states and the Federal Capital Territory (F.C.T.).

⁶⁴ The North-east; North-west; North-central; south West; South East; and South south geo-political divisions.

⁶⁵ The Mangrove, Rainforest, Guinea, Sahel, Sudan Savannah .

⁶⁶ Designated as the 19 states of the north and Ebonyi state, in Nigeria.

⁶⁷ Based on the 2006 National census and subsequent indices.

⁶⁸ Natural disasters, soil texture and topography. Federal government distribution of ecological funds to states on this basis for example.

⁶⁹ Poverty rates, Ease of Doing business index, etc.

⁷⁰ Limestone , gold, etc.

⁷¹ The Federal Allocation of monthly to states in Nigeria.

⁷² Such as the representation in government in every arm and tier.

⁷³ Natural resources like crude oil exploration permits.

fertilizers and improved seeds, extension workers, irrigation facilities, equipments and machines for agriculture; lands for all manner of uses; jobs; trade licences and even government appointments and representations at different levels of governance, are all examples, but not exhaustive of resources that come under items for distribution and allocation, based on different factors and with different classifications.

On the peculiar problem faced with the workings of the quota and distribution of resources in a federal state like Nigeria, *T.O.Dada* had noted that ‘*one of the most persistent problems of federalism is that of revenue allocation, that is the distribution of national wealth from the national pool*’⁷⁴

While such agencies, as the *Federal Character Commission (FCC)*; the *National Assembly* in itself,⁷⁵ handle the political resources allocation, the *Revenue Allocation and Fiscal Commission*; the *Salaries and Wages Commission*, etc with Ministry of Finance and decisions from the *Federal Executive Council (FEC)*, at the presidential villa, cater for financial resources allocation. Admission policies and state directives, such as the catchment area, indigeneship considerations, educationally less developed area are factors that control the distribution of educational resources in Nigeria. At other times, such ridiculous considerations as family members and relationship, ancestral ties, bribes and undue benefits determine the basis for allocation of resources in the name of quota.

Quota system connotes that people will be classified into different groups, by different standards, including state basis for which in Nigeria, indigeneship is traced by local connection which determines who gets what, where and how.⁷⁶ The quota system in practice does not fail to engender discrimination, as it tags a maximum or minimum to which individuals or group of people can get based on where they come from, rather than on their

⁷⁴ T.O. Dada, *General principles of law*. 2nd Edition, 1998.

⁷⁵ By the representation of 3 senators from each state, for the senate and the representation for the House of Representatives to the tune of 360 members.

⁷⁶ Theory of Harold Dwight Lasswell on the definition of politics.

qualification merit or contributions to the development of the subject matter or place where they deal with.

This is not to say in any way, that the quota system has no merits at all. It has (if the structure of the National Assembly is considered), helped to ensure representations, considerably equitable, of every people, through such methods which the quota system employ. Also, quota practice like the compulsory consideration of candidates from the educationally less developed states in admissions policies of federal institutions, not meant to stagnate the educationally developed areas, but provide opportunity for other states with lower literacy levels to come up to par with their counterparts so that, as in the federal system, no region is left behind. In the end however, especially as with its continued unrevised practice in Nigeria, since before 1960 independence, the quota system has become manifestly discriminatory and antithetical to reward for hard work and participation in development of the sector, subject matter of the quota system. This is squarely highlighted, in the already examined case of *Elizabeth Badejo v. Minister for Education*⁷⁷ in which the *Unilag Staff School* pupil had studied hard to beat the examinations and interview cut off points begged for qualifications for admissions into the Federal government owned unity schools, but because she was from Ogun State, a state which stood among the highest performers in the examination, with more applicants, she was denied admissions on the ground of a maximum intake from her state to make room for other pupils from other regions , with far lower scores into the same schools. When the Supreme Court had utilized the *locus standi* principle to refuse her application for enforcement of her right against discrimination, that she had not suffered over and above others in same category as hers, was it not an announcement of the fundamental defect in the practice which have left a lot of citizens adversely affected. Should there not be other means,

⁷⁷ Supra.

to encourage the target values for any region to march up with their counterparts than by denial, of merit and hard work and outright discrimination.

In the Agricultural sector for example, where a certain region has a comparative advantage in the production of millet, for instance⁷⁸ and the farmers have taken their time, intentionally or by sheer experience, to cultivate and produce tones of the said crop annually. Should such inputs like improved seeds, machines and extension workers, with focus on the said product, not to made to accrue in greater proportion to such a state, for better marginal output and benefit to the nation, rather than on a nearly equal basis to all states, which is likely under a quota arrangement, so that no state is left behind.

This quota system practice when taken in extreme bear marching consequences, when average performance and mediocrity sets in and the level of production of resources diminish continually. When for example, the Nigerian candidate for the *International Criminal Court (ICJ)* Judge's job opening was,⁷⁹ the Chief Judge of the Federal Capital Territory, F.C.T. Abuja, *Justice Ishaq Bello* was ranked low (scoring below 5%) amongst 20 contenders for the ICJ job,⁸⁰ although many other factors may be considered, the operation of the quota system could be questioned when a person is appointed based on the need to cover 'federal gaps' than when merit and qualification is put to question.

Thus, discrimination, although unintended, has become facilitated by the continual practice of quota system in Nigeria, for the allocation of resources.

⁷⁸ Benue state in the North central region of Nigeria.

⁷⁹In the Hagues, Netherlands, which calls for 11 new judges every 3 years to replace Judges that have served for 9 years maximum in its 22- Judges bench .

⁸⁰When for example, the Nigerian candidate for the *International Criminal Court (ICJ)* Judge's job opening, the Chief Judge of the F.C.T., *Justice Ishaq Bello* was ranked low (scoring below 5%) amongst 20 contenders for the ICJ job, although many other factors may be considered, the operation of the quota system could be questioned when a person is appointed based on the need to cover 'federal gaps' than when merit and qualification is put to question. *Premium Times Newspaper*. 22nd October, 2020.

4.8 Implications of Interpretations to Section 147, Constitution of the Federal Republic of Nigeria, 1999.

As has been earlier pointed out, the constitution of Nigeria is silent on the issue of the concept of indigeneship.⁸¹ It was however mentioned in the appointment of ministers by the president under, *section 147 particularly at subsection (3)*. Section 147 states thus:

(3) Any appointment under subsection (2) of this section by the President shall be in conformity with the provisions of section 14(3) of this constitution:-

Provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each state who shall be an indigene of such state.

This reference to application of provisions of *Section 14(3)* which is part of the directive principles of state policy in *chapter 2* of the constitution, is on the reflection of the federal character of Nigeria, which reads thus:

Section 14(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

While *section 14(4)* also provides for states government reference to federal character in her appointments which reads thus

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 the affairs of the Government or council or such agencies shall be carried out in such a manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

⁸¹ It has not been defined expressly nor interpreted in the interpretive schedules of the constitution.

Although not expressly stated, the constitution seems to give credit to indigeneship on state basis and inadvertently rules out the qualification for settlers to enjoy same privilege of ministerial nomination. Who an indigene is, is not defined, but it is most unlikely, that settlers or people who should ordinarily become indigenes by marriage, nor one tracing his indigeneship through his mother (the matrilineal alternative system) are in contemplation. Typically therefore, *Hon. Justice Ikpeme* will ordinarily not qualify to represent Cross river state as minister if the proviso to *Section 147(3)* is anything to go by. This is akin to the encouragement of the very discriminatory practices which the constitution profoundly attempts to prohibit in its various sections.

The reasons for the proviso in *Section 147 (3)*, which is explained out by *section 14(3)* for the observance of the federal character principle is intrinsically a laudable and desirable objective, especially when the diversity of ethnic groups and culture, as well as interests in Nigeria is considered. Not with standing, the operations of the federal character principle , in addressing ethnic representation in public sector in the issues of admissions, education, recruitments, promotions and appointment produce the effect that advancement in the country's public institutions which ought to be drivers of development is neither based on merit nor competence.⁸² It also tends to enthrone waves of discrimination, exclusion and preference which sweeps through virtually all aspects of the Nigerian polity. No wonder the protest by certain *Ondo indigenes* on the appointment of *Mrs. Opunimi Akinkugbe*, the Rivers born *Ondo indigene by marriage*, as ambassadorial nominee for *Ondo* state as she is viewed to be a 'foreigner occupying their quota space- their (Ondo state's) chance to share in the National cake', was all that mattered and not whatever qualification she had or her competence for the job.

⁸² Adeyinka A. Adejube and Adedolapo N. Adejugbe *Women and Discrimination in the workplace: A Nigerian Perspective*.

This practically, is the bane of indigeneship, as well as other grounds of, discrimination in the tendency to deny opportunities to, hitherto qualified citizens.

CHAPTER FIVE

A COMPARATIVE ANALYSIS OF NIGERIA AND OTHER CLIMES

This section of the work reviews Nigeria's experience compared with a survey of what obtains in other climes in terms of discrimination based on gender, ethnicity and indigene-ship.

5.1 Introduction

It is important to note by way of introduction, that an analysis of what obtains in Nigeria in comparison with other climes is shrouded with certain affiliations which can generally continentally associated. This is to say that an analysis of what obtains in Nigeria as regards discrimination based on gender, ethnicity and indigene-ship provides a fair indication of what may be obtained generally in the African continent (where Nigeria is located) on the various issues raised. This also the case with the United Kingdom and the United States of America (and other countries), analysed in this section, in representing the general pulse of the American¹and European continent regarding the issues of discrimination based on gender ethnicity and indigenship. It is noted that these issues exist in different colourations and to different degrees in the continents but the attitudes towards mitigating them have also been different.

5.2 Gender Discrimination as Global Issue

Gender based discrimination is a global issue. To different degrees in many countries, certain gender, the female are the subject of certain limitations, restrictions and exemptions. There has been however, in responseto these treatments, marching resistances and protests and with the presence of requisite legislative opportunities, enactment of enforceable laws to assuage

¹ Especially the south American continent.

the continued operations of the unpopular practices, regarded as discriminatory.² In the third world and developing countries of Africa, like Nigeria, this form of discrimination is prevalent and entrenched and more difficult to eradicate, especially when it is considered that the customs, traditional practices and core societal values which affect every other aspect of life, exalts the male over the female gender. Notwithstanding, gender discrimination is, at the same time looked upon, on a global average to be a practice of growing unpopularity, and the more developed nations like America and European countries, and virtually all well meaning progressive states, have gradually championed equality rights with, adequate measures in place to totally eradicate any form of gender discrimination, at least by strong and working legal institutions. The socio-cultural norms in these countries do not provide fertile grounds (as is much obtainable in African), for the perpetration of such discriminatory practices. For example,for marriages in England, the *English Marriage Act*³, a product of the English custom provides for ‘...voluntary union between one man and one woman, to the exclusion of all others’, as reaffirmed by *Lord Penzance* in *Hyde v.Hyde*,⁴ where he had defined a Christian marriage which definition had been accepted and used a long time. Regardless of the modification of the definite onto include other civil unions today,⁵ it still is posited as a union between ‘two parties for a life time’. This is unlike the position in various Nigerian (and many African) customary marriages that allows for multiple wives, with the number varying per culture and religion.⁶ The mere structure of polygamy, prevalent in many Nigerian customary marriage laws allow opportunity for gender discrimination as has been

² The United States Voting Rights for women which implemented the Universal Adult suffrage, passed as the 19th amendment to the U.S. constitution passed by congress on the 4th of June 1919 and ratified on 18th August, 1920 gives a vivid illustration of discriminatory policy against women politically.

³Marriage Act of England 1753.

⁴ 1 P &D. 130.

⁵ Same sex marriages, for example.

⁶ Islamic religion for example provides a maximum of 4, within the capacity of the man.

pointed out earlier⁷, while monogamy, the general practice in England and America in tandem with traditional American and European culture, suggests levels of equality between the parties in marriage contract. Two women, for example do not, obviously have to compete for the attention and love of one man,⁸ which would naturally restrict them to behave in certain ways. The family values in these countries, do not support much stereotypical gender roles as much as they do in Nigerian and typical African settings. Men or women may do house chores, man or wife take turns to stay away from work, to give their kids attention, taking them where necessary to school games and events or share such responsibilities that are typically labeled masculine and feminine.

In the aspect of education, opportunities to work and social welfare, unlike Nigeria, there is better balance between both sexes in most European and American countries. Gender distinction does not mostly get in the way when access to these resources is evaluated.

The Asian countries of the world are also making efforts to drop restrictive customs focused on women, in order to be adapted to more contemporary lifestyles and global practices. The United Arab Emirates (UAE) laws for example, now allow women to drive automobiles and to wear moderate clothing in tandem with nature of work and engagements, today as against heavy covering and seclusion customs, illustrates the changes in the Asian continent's custom, removing further away from laws inclined towards gender based discrimination on women. For Nigeria on the other hand, this aspect of gender based discrimination, although obtainable in scanty incidences does not have the extremes which was hitherto obtainable in the Asian countries. Under the Islamic customary laws in Nigeria, the women have a general duty to wear the *hijab*⁹ and stay (especially the married women) in general seclusion. This

⁷ Where many wives have to compete and focus their attention on winning the love of their husband.

⁸ The common narrative in polygamous marriages.

does not however, translate to national laws that are fiercely enforced as was the case hitherto in the United Arab Emirates. Infact, it is the female muslims who have taken ownership of the practice and considering it as a worthy duty imposed by Islam than to be compelled to obey against their wishes¹⁰.

When it comes to access to justice, fair treatment, succession to estate and inheritance, while there is general low visible distinction between genders as a ground for discrimination in England and American countries, it is a tangible factor considered in typical Nigerian society. In America, for example, society is not strictly patrilineal, one could answer to being descendant from his mother's lineage and enjoy any benefit in full that accrue in the family he lays claim to. The same is the case in Europe, the dominant exhibition of this is visible in the royal family which has had both male and female monarchs who trace their, right to the throne on the fact of being of the royal lineage, and not on their gender. The present monarch, *Queen Elizabeth II, Queen of England* had inherited the royal stool as a qualified heiress of her father and her descendants will trace their rights to the throne through her. There is little or no discrimination based on gender for access to justice and attainment. Women, (and men alike), aspire to, and attain any level of status they desire without as much harassment (or adequate respite by the laws and institutions, where they arise). Similarly, in the Netherlands, *Article 1 of the Constitution*¹¹ provides that '*Discrimination on the grounds of religion, political opinion, race, sex, or any other ground whatsoever shall not be permitted.*' However, when compared to Nigeria, the practice is tangibly different. It is common knowledge that society is basically patrilineal- descent is recorded through male gender- and its effect runs in almost every aspect of cultural and traditional societies to shape the ability to access certain

¹⁰ Amasa Firdaus The 2017 Bar Candidate, who insisted on being called to bar wearing her hijab hinged on the right to religious freedom guaranteed in section 38 of the constitution of the Federal Republic of Nigeria, illustrates this point. *Hijab Controversy: Affected Law Graduate Amasa Firdaus, speaks*. Premium Times Newspaper (Nigeria, 16th December 2017), accessed 20th April, 2020.

¹¹ Fundamental Rights, Chapter 1 of the Constitution of the Kingdom of the Netherlands.

positions and resources. The rules of inheritance and succession are with priority concerned with male children first and the female succession (and this allowed with limitations in Nigerian traditional custom like the Yoruba and Islamic customary law of succession), is only considered when the males are either deceased, or where available, encumbered by one incapacitating factor or the other. The Benin customary law which exclusively assigns the *Igiogbe*- the principal dwelling house of a deceased man to his first son (notwithstanding the honesty of intentions) is only a reflection of this point-the inclination of cultural practices to exclude women in succession matters. It is no news that many if not all traditional stools are an exclusive preserve for male heirs, sometimes hereditarily and only titles of honour bestowed on female members of royal families or those who distinguish themselves in service to the society¹²

The American and European societies are generally less inclined to subjugation and a little more liberal as well as flexible when it comes to issues as job categorizations or role description, in important institutions, including the family and marriage institution. Their liberal posture, it may be argued portends dire consequences in extreme cases like the same sex marriages, bestial unions or devising of real property to animals and pets, or to the rate and ease of divorces and remarriages, broken homes, single parenting and defective young adults and the multiplier effects of vices and break down of public morality. These however, bear the colourings of morality, for which the law is not primarily concerned.¹³ In Nigeria, on the other hand, a sharp contrast may be noted. Traditionally defined gender roles and categorization on the basis of masculinity or femininity affects almost every stratum of existence and social interactions from marriage and family, to job types, levels of education, ownership and access to property in terms of purchase or leases to even to extremes of the

¹² Queen Moremi of Yoruba land, Idia of Benin kingdom and Princess Inikpi of the Igala custom for example

¹³ In reference to the Austinian theory of Positive law, which basically postulates that laws as posited by the sovereign with authority to make them must not be enquired as to its moral content. Other scholars like Prof. H.L.E.Harts, Hans Kelson, Thomas Hobbes, also made useful contributions in agreement with the postulation.

places one might be found or things one might say. Thus, a married woman may unofficially not be expected to be found purchasing some liquor in a bar. The discriminatory element in this rather desirable norm is that same standard is not applied to the men.

5.3. Ethnicity and Indigeneship Discrimination in Nigeria and Other Climes

On the issue of discrimination based on ethnicity and indigene-ship, being that not many non-African nations are categorically divided into as many sub groups as are obtainable in Africa, or even where they existed have been de-emphasized until national unity has been achieved. This is to say that in Europe and America, there is either no proliferation of multiple tribal affiliations and identifications, or where existent have been significantly replaced by a nationalistic ideology, such that ethnic segregation or discrimination based on Indigene-ship is relegated and not ordinarily a determining factor for access to national, civic resources like access to education and jobs or promotions. In the United States of America, for example, discrimination based on indigeneship is largely absent, where the place of citizenship is exalted above state or local council, district or borough indigene classification. An American is an American in any place within the American soil he finds himself. In contrast however, this hardly the case with Nigeria, one's "Nigerian-ness" is hardly all that is relevant in the allocation or access to national resources, our Local Governments, states of origin, tribal affiliation determine almost everything in how we can access education for example and where and at what cost. The *Badejo case*¹⁴ illustrates vividly on this point.

However, racial discrimination, a larger variation of ethnic discrimination, not particularly obtainable within the categories of ethnic discrimination in Nigeria, where less favourable treatment on the basis of skin colour or historical or national descent is meted on certain persons, has in the times past (and with resuscitation in recent times), been the bane of the

¹⁴ Elizabeth Badejo v. Minster for Education (supra)

American people with black Americans, as the primary victims.¹⁵ This is sadly however, notably not novel to the American people. The trans-Atlantic slave trade, which subjugated Black Africans, especially from West Africa to unimaginable terror and dehumanizing treatment both on voyage to and in Europe and America, where they were sold as slaves, could be viewed as early traces of ethnic discrimination in its most treacherous form. Racial discrimination has had quite a timeline in Europe and America. This is highlighted in educational, social and socio political as well as socio-economic deprivations of the black people in America, especially the Southern parts in the 20th century which equally saw the rise of resistance and civil rights activities of many like the *Rev. Martin Luther King Jr.*¹⁶ with his civil rights movement, who used all opportunities and platforms available to him to protest the black race discrimination in the scheme of things in the United States. Recent series of extra judicial killing of black people by white cops which sparked off the *#BlackLivesMatter* protests in 2020¹⁷ also vividly highlights this form of ethnic discrimination not particularly obtainable in Nigeria.

These events are not isolated from the American recent past in the 19th and 20th century. During the reconstruction, black people took on leadership roles like never before, they held public office and sought legislative changes for equality and right to vote. The 1868 14th amendment to the United States constitution gave black people equal protection under the law. The 1870 15th amendment granted Black American men right to vote and many whites were unhappy that their once enslaved people now had more or less equal playing field. The *Jim*

¹⁵ The George Floyd suffocation by white cops, Derek Chauvin; Ohio fatal shooting of black teenage girl on 21st April, 2021 while she brandished a knife (22nd April 2021., Aljazeera English) and several recent incidence of white cops shooting against the black people labeled as inclined to deadly crimes.

¹⁶ Black American preacher and social activist popular for his activism in especially Southern America, His 'I have a dream' speech, delivered at a protest rally few years before his assassination in 1968, being the most significant remembrance of him.

¹⁷ The killing of George Floyd particularly renewed the protests- an international campaign against discrimination against black race especially in the American soil. The Chicago shooting of a 13 year old, Adam Toledo, a Latino American, one in several other extrajudicial killings have reinvigorated the campaign against racial discrimination against the black race.

Crow laws of 19th century, ensured black people could not use same public facilities as whites, live in the same towns or go to same schools or marry inter racially, which was illegal previously. Most blacks who could not pass a, usually deliberately confusing voter literacy test, would not be allowed to vote during elections. Although, mostly prevalent in Southern America, those in the North American areas also experienced work discrimination in access to jobs that pay better or systemic resistance when they attempt to acquire landed property or an education too. When compared to Nigeria, these forms of discrimination exists today but on a slightly different basis and reasons and may not carry all the harshness of the American racial discrimination, while items like the deliberate voter disenfranchisement through the instrumentality of voter literacy test may be largely absent. Also, the reasons for denial or restriction of access to lands and property by a certain community in Nigeria, for example is not to punish or keep in subjugation the settling foreigner¹⁸ so that he does not obtain any tangible economic power like was the case in America but to preserve these resources for the enjoyment of future generations of that particular community. Thus, the actions of denial of access to resources like lands may be the same but the intentions are different between the American racial discrimination and the Nigerian ethnic and indigeneship discrimination. While that of America wore a deliberately negative garb, the Nigerian practice is more inclined positively (although as crude selfish interest) towards self preservation.

5.3.1 ‘Separate but Equal’

In reviewing the American racial discrimination timeline, at the time, there was a pronouncement on the spate of discriminatory practices, in the United States Supreme court in the case of *Plessy v. Ferguson*¹⁹ which actually subtly re-enforced Southern segregation in 1896 when in answering questions as to whether the practice of offering distinct services and social facilities to different persons on the basis of their race, with that of the blacks being

¹⁸ Who were mostly descendants of former black slaves, who had been freed from slavery.

¹⁹[1896] 163 U.S.537.

typically of lower quality with subtle intentions to humiliate, the Supreme court held that facilities for the blacks and white could be separate but equal. Thus, although the court pronounced it discriminatory to render different standards of services on the basis of race, it upheld the practice of separation. For instance in a public transport facility, the blacks usually sat at the back with their seats so designated while the whites took the front rows. This of course is alien to Nigerian history, our forms of ethnic discrimination did not cover nor could it be envisaged to take such personal dimensions. Moreover, our levels of development and urban settings at the time had not measured up to entertain such issues.

Before *World War II*²⁰, most blacks worked as low-wage farmers, factory workers, domestic servants and so on. Early 1940's, war related work boomed, but most Black Americans were not given opportunity, nor encouraged to join the army. Thousands of blacks threatened march on *Washington* to demand equal employment rights and *President Franklin D. Roosevelt* issued *Executive order 8802* on *June 25th, 1941*, opening up national defence jobs and other government jobs to all Americans irrespective of race, creed, colour, or national origin. Black men and women were heroic in the world war, despite segregation and discriminatory deployments, yet even more, were met with scorn on return.

Cold war began and *President Harry Truman* initiated a *Civil Rights Agenda in 1948* issuing *Executive order 9981* to end discrimination in the military. This prepared the stage for grass root initiatives (as necessary everywhere) to incite civil rights movements and racial equality legislations to end ethnic discrimination.

Story of *Rosa Parks*, 42 year old black woman who on her way back from work, found and refused to vacate a seat designated for blacks at the back section of a bus in *Montgomery, Alabama* for a white man who could not find one in the white section of the bus. Her arrest sparked off protests and a boycott of the Montgomery Bus System for 381 days. Black

²⁰ 1939-1945.

community leaders formed the *Montgomery Improvement Association (MIA)* led by Baptist Minister, Martin Luther King Jr. On November 14th, 1956, the U.S. Supreme court ruled segregated seating arrangement, unconstitutional. Prior to this and in 1954, the highest court made segregation illegal in public schools in *Brown v. Board of Education*²¹, such that in 1957, *Central High School in Little Rock, Arkansas* asked for volunteers from all Black High schools to attend the formerly segregated school. On arrival of 9 pupils on the 3rd September, 1957 known as the *Little Rock Nine*, they were met with resistance on the order of the Governor, *Oval Faubus* using the *Arkansas National Guard* and a threatening mob. When they tried again few weeks later and made it inside the school, they had to be removed for their safety when violence ensued. Even when *President Dwight D. Eisenhower* intervened by sending federal troops to escort the *Little Rock Nine* to and fro classes, yet harassment and prejudice continued.²²

The mischievous voter qualification test for blacks, especially in the South which was nearly impossible for blacks to pass had *President Eisenhower* pressure congress to pass and he sign into law the *Civil Rights Act, 1957* into law, which allowed among other things for federal prosecution of anyone who tried to prevent another from voting. He also created a commission to investigate voter fraud. In *Boynton v. Virginia*, U.S Supreme court declared segregation of interstate transport facilities unconstitutional.

The August 28th, 1963 March of Washington organised and attended by civil rights leaders as A Philip Rondolph, Bayard Rustin, Martin Luther King Jr., and over 200,000 people in Washington D.C., where Dr. King's '*I have a dream*' speech was delivered. The *Civil Rights Act 1964*, which President J.F. Kenedy had overseen before his assassination was signed into law, on July 2nd 1964 by President Lydon B. Johnson, which inter alia guaranteed equal

²¹347 U.S. 483.

²² This subtly portrays the fact that application of force may inhibit express manifestation but cannot totally expunge it, except a mental dissuasion. *Why Eisenhower sent the 101st Air borne to Little Rock after Brown v. Board of Education 347 U.S 483.*

employment for all, limited the use of voter literacy tests, allowed federal authorities ensure public facilities were integrated.

The *Fair Housing Act 1968* passed into law 11th April, 1968 also preventing housing discrimination based on sex, national origin, and religion, was another legislation aimed at curbing the perpetration of discriminatory practices in the housing sector. This is unlike Nigeria, as few specific legislations have been enacted to categorically, address issues of ethnic or gender-based discrimination.

In Africa, the *Apartheid Regime* in South Africa and the *Rwandan Genocide* Rwanda, 1994 highlights the workings of negative effects of ethnic discrimination. When compared with Nigeria, the closest to this extreme form of racial discrimination is the civil war of 1967-1970 with records of wanton massacre of the secessionist *Biafran* people of South Eastern Nigeria, on the basis of their ethnicity.²³

However, racial discrimination has largely been downplayed when it comes to political offices and appointments in more contemporary times. With the appointment for instance, in 2020 of Mr. Kaycee Madu, a Black Nigerianas Albertan Minister for Justice in Albertan province of Canada, and Professor Charles Egbu, another Black African (a Nigerian) as the Vice Chancellor of Trinity Leeds University in the United Kingdom as recent examples. Several mayors, and governors and members of parliament are non-indigenes of the European countries, where they hold positions. When compared with Nigeria, there is yet no room for this kind of departure from racial discrimination in terms of foreign political appointments in Nigeria. The presence of intercontinental foreigners in Nigeria or even those of African descent is not so significant to the point where their relevance is sought in certain political or other critical economic sectors in terms of appointments, unlike the dominating

²³especially in the northern cities of Kano and Zaria, in the events leading to the breakout of the war.

presence of black migrants in Europe and America, where appointments and elective political offices have begun to be accorded them. The foreign population in Nigeria are mainly concerned in businesses and economic contracts and have not made much political impressions. All Nigeria yet, has to deal with is the internal discrimination of its citizens based on tribe or ethnic affiliations or the concept of indigene-ship.

It can thus be seen that although the practice of discrimination based on gender, ethnicity and indigeneship is not peculiar to Nigeria, as they are also obtainable elsewhere, the promulgation and effective implementation of laws to squarely deal with the manifestations of the same, makes the difference between Nigeria and European and American countries considered. While Nigeria, as well as other countries have in the minimum enforceable laws upholding the freedom from discrimination, the disparity comes in the actual enforcement of such laws which puts America, which had terrible history, especially with racial variation of ethnic discrimination, ahead of Nigeria in ensuring such matters are dealt with by effective laws.

CHAPTER SIX

SUMMARY, RECOMMENDATIONS AND CONCLUSION

In the course of this work, we have been able to consider discrimination on the grounds of gender, ethnicity and indigene-ship, with findings in the following manner.

In Chapter one, we introduced the concepts of rights and freedom and gender, ethnicity and indigeneship as they relate to discrimination. The various statutory framework as well international provisions, enforceable in Nigeria that prohibits the practice of discrimination were examined. Practical examples, chiefly the ordeal of the Hon. Justice Akon Bassey Ikpeme, the Cross River state Chief Judge who was hitherto, denied same appointment on account that she is not an ‘indigene’ of the state was examined as case study of the practice of discrimination in Nigeria and the extent to which it is entrenched in the polity, lack of adequate protection from the situation and the weakness of the law in this regard.

In Chapter two, gender-based discrimination was considered. The most affected group where the female gender have tended to be the centre focus of the same; statutory provisions against it, chiefly guaranteed in our constitution. The manifestation of the discrimination of the female gender in the family front and succession matters; matrimonial causes; access to education, and other social services with special focus on work related sex-based discrimination. Findings showed that the practices among the Nigerian family, socio-cultural, religious and political settings are naturally inclined to initially discriminate the female gender and may be stubbornly persistent, as it is more or less entrenched deeply, the provisions of the certain laws like the Police Act not being of any aid in this regard. Employment policies have naturally side tracked the female gender especially in private sector and corporate world where terms of employment does not provide for pregnancy and maternity leaves and so on. Female disinheritance, wife inheritance, early marriage and so on still go on and may have religious backing and support of customary law.

I therefore recommend that the provisions of the Labour Act which provides for adequate protection for all genders should not just be what they are- laws written in books but should be actually executed religiously. Such discriminatory laws like section 127 Police Act should be repealed in its entirety and expunged from the Laws of our federation. This will go a long way to set the pace for our traditional and customary practices to feel the pulse of modern practice and adapt similar pattern of abandonment of undesirable archaic gender discriminatory practices. Even so, the traditional institutions needs be engaged in restatements and modernisation of age long discriminatory practices especially against the female gender.

In Chapter three, discrimination based on Ethnicity was the focus with such aspect of control and settlers access to land through sales and leases; community leadership and political representation and the like are heavily influenced by this form of discrimination. It was found that this form of discrimination has been exemplified by such issues as the farmer-herder crisis and the activities of the Sharia state security outfits in the Northern Nigeria, where although Nigeria is a secular state with no state religion, these militia seek to implement Islamic law not only on a customary basis but in secular spheres and a blanket application upon all who persons who are there domiciled, whether subjects of Islamic laws or not. It was the finding that although the Fulani herdsmen as citizens have a right to freedom of movement within the country, it did not extend to liberty to enter upon and destroy cultivated lands or plantations of farmers and host communities for one person's rights stops where another's rights begins. Lands should however not be hoarded from genuine investors who will utilize them and with attention to the culture of the host community, so that it is a win-win for both the community and the investor-settler

It is my recommendation that hence the provisions of the constitution in the directive principles of state policy provided in chapter 2 of the constitution cover well laws prohibiting

segregation and other forms of discriminatory practices especially along ethnic lines, it should be made justiciable by the repeal of section 6(6)(c), Constitution of the federal Republic of Nigeria which render them ousted from enforcement as human rights in any court of law. This will set the pace in deconstructing this already entrenched form of discrimination from the general practices of the people. Traditional institutions should be engaged, at the grassroots for this purpose, as they still have great levels of influence, on their subjects in terms of moulding their values and social expressions. Citizenship over Indigene-ship or ethnicity should be emphasized, so that any Nigerian student for example, can attend any tertiary institution of his choice and not be subjected to different standards of tuition fees because he doesn't hail from such a state.

In chapter 4, we considered discrimination based on the concept of indigene-ship and we discovered that this form of discrimination is not only practiced informally among the peoples but seem to be formal national policy given credence chiefly by the provision of the constitution in section 147(3) which proviso states that a person must be indigene of a state to qualify for appointment as minister of the Government of the federation, while it provided against suggestions as state based distinction in the directive principles of state policy. Does it portray a constitution contradictory of itself? Such other policies as the Federal Character, quota system practice, indigene-settler question as against citizenship, state of origin column in every essentially formal document for jobs, recruitments, promotions, admissions and scholarships, appointments, etc all tow the same line with what the pulse of the constitution, in a various adaptations. A married woman will therefore not qualify for any meaningful assignment of service at her new found place of origin where she is not from same state for example. Attempts to get appointments have been met with deep resistance as has been highlighted in this work. It is observed that the federal character principle fetches the average into leadership positions and the quota system a disincentive to rapid development and

technological advancement where grossly unqualified persons are saddled with responsibilities only because their states or regions must be represented, while more capable hands are discarded. Moreover, the Federal Character system has been manipulated to entrench the dominance of person from certain regions and especially deny others opportunity.

It is recommended that a constitution that encourages its citizens to live together and pursue national cohesion with the values of justice and equity and inputs same provision in a non-justiciable column and yet recognises the place of indigene-ship and ethnicity indirectly in the allocation of national resources should be scrapped in its entirety. This is especially as history has it that it was written without the peoples' consent or validation and handed down by a military arrangement in 1999. Ordinarily, that one is a Nigerian citizen or born within the country should suffice to qualify him/her access for any national resource, with only the quota system reserved for only the extremely vulnerable class.

Chapter Five, examined in comparative analysis, the incidences of discrimination based on gender, ethnicity and indigene-ship in other countries with focus on European and American countries of England and the United States of America (USA). It was found that even though contemporary years have tended to show that there is truly freedom from gender based, ethnic and indigene-ship discrimination in these countries, a few years prior featured these issues. Significantly, the slave trade of the 19th century where the black African slaves shipped from west and east Africa portrays that. The Black segregation in America and the resistances that followed with the Martin Luther King Jr. Civil rights movement exhibited the ethnic discrimination. The xenophobic attacks in South Africa and the more recently Ghanaian hostilities and selective taxes against Nigerians, especially businessmen have all exhibited pockets of such ethnic, nationality and indigene-ship discrimination but this time with racial inclination. The #BlacklivesMatter protests campaign in 2020 against incessant

extrajudicial murder of black people in America have also highlighted the presence of ethnic discrimination in the country. Apart from these instances so highlighted, the prevalence of discrimination based on gender ethnicity and indigene-ship is generally not a front burner issue when it is considered that the practical custom of the people, the national orientation of citizenship over indigene-ship, the general health of the economy where there is not much struggle for national resources, the practice of true federalism where states independently control significant portions of their resources and the effectiveness of the judicial and political systems in preventing or correcting the consequences of such discrimination with the entrenchment of the Human rights and equity principles, all give credence to the non prevalence of ethnic, indigene-ship and gender-based discrimination in these countries.

It is strongly recommended that Nigeria adopts these values first by repealing the prevailing and re-enacting a truly national constitution that is in tandem with our national aims and objectives, putting into equitable consideration the diversity and sensitivity of the people where such policies as the federal character will not be employed to cause disaffection among the people and state policies will not entrench discriminatory practices. A national re-orientation and imbibing of the policy of citizenship over ethnicity, starting from the grassroots, traditional institutions and family; building strong national institutions and a responsive justice delivery system; provision of facilities for a viable economy where businesses and the economy thrive, devoid of discrimination, especially based on gender, ethnicity and indigeneship.

Conclusion

The right to freedom from discrimination, as has been enquired into, is observed to be provided in various enforceable laws, operational in Nigeria. From the provisions of the constitution,¹ to international conventions, operational and domesticated in Nigeria,² to policy

¹ Section 42; provisions in Chapter 2 of the constitution

documents and internationally set objectives like the Sustainable Development Goals (SDGs). Few case laws have upheld this right, especially when gender, ethnicity and indigene-ship are considered.

However, the operational experiences of these laws and policy directions, when measured by their performance among the Nigerian people and society and even representatives of government, point towards the contrary – that the right against discrimination have been observed with scanty interest. Even though discrimination can hardly be fully eliminated, at least from the consciousness of the people, it has had open manifestations without apologies, in different aspects and to varying degrees in the affairs of the people; among themselves, between the people and the government; and (perhaps unintended) the government towards the people through the laws. Such issues can be resolved if the recommendations provided in this work can be adopted by relevant authorities such that discrimination on the basis of gender, ethnicity and indigene-ship becomes a thing of history.

² The African Charter on Human and Peoples Rights (ACHPR) Domestication and Ratification Act 1983; Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), for instance .

BIBLIOGRAPHY

Textbooks

- Adaramola F, Adaramola Jurisprudence (Lexis Nexis 4th Edition 2008).
- Aigbokhaevbo V. O, *Criminal Law in Nigeria*.
- Black's Law Dictionary (8th edition, 2004).
- Chianu E, *Law of Sale of Lands*.
- Dada T.O, *General Principles of Law*, (2nd Revised Edition, 1998).
- Nasir M, *Women's Rights in Nigeria* 1998.
- Nnoli Okwudiba, *Ethnic Politics in Nigeria* (Fourth Dimension Publishers, Enugu 1978) .
- Olong A.M.D, *Land Law in Nigeria* (2nd Edition 2011).
- Sylvester O. A, and Bonaventure U C., *State of Human Rights in Nigeria* (Cencord 2011 Annual Reports. General Editors).
- The Holy Bible, New King James Version. Matthew 20: 1-15.
- Yinka O, *Human Rights on Gender, Sex and the Law in Nigeria* (Revised Edition 2015).
- Zakariyau I. O, *A Digest on Islamic Law and Jurisprudence in Nigeria-Essays in Honour of Honourable Justice Umaru Faruk Abdullahi, President, Court of Appeal, Abuja*.

Articles and Journals

- Adesoji Alao 'Settlers-Indigenes Question in Nigeria' (2017) 13 European Scientific Journal.
- Anyogu F. and Arinze-Umboi, Achieving Gender Equality and Public Voice in Nigeria (2010-2014) 9 University of Jos Law Journal.
- Babalola, A. A, 'Honourable Justice Ikpeme's appointment as Chief Justice: Birthplace' (2020) Law Care Nigeria.
- 'Cases on Human Rights', (CHR, 2007).
- Enabulele A. O, 'Indigenous Theories of Concept of Law' (uncopyrighted).
- Enabulele A.O. and Bazuaye B, 'Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts' (2019) Journal of African Law.
- 'Gender Mainstreaming in Legal and Constitutional Affairs: A Reference Manual for Governments and Other Stakeholders'.

- Ifemeje S. C. and Umejiaku N, 'Discriminatory Cultural Practices and Women's Rights among the Igbos of South East of Nigeria: A Critique' (2019) 8, *Journal of Law and Globalization International Journal of Science Technology and Management*.
- Modupe A. N, 'Gender, Women and Climate Change in Nigeria', (2010-2014) 9 *University of Jos Law Journal*.
- Omoruyi I. O, 'Marriage in Private International' Department of Jurisprudence and International Law, University of Benin, Benin City, Nigeria.

Online Sources

- Abasi, S., '*Using Indigeneship against Married Women is Disincentive to National Cohesion*' *Guardian Newspaper*, 26th July, 2020 (Nigeria Accessed 27 February 2021).
- '*A Brief History of Jim Crow*' Constitutional Rights Foundatio, The Martin Luther King Jr Research and Education Institute, Stanford.
- Akpata, O. '*Statement by the Nigerian Bar Association on the Cross-River State Judiciary Saga*' President, Nigerian Bar Association, (NBA). 14th September, 2020.
- Avaaz, '*Victimization of Justice Akon Ikpeme, Each for Equal*'. 7th March 2020.
- '*Ban on Open Grazing by Southern Governors Unconstitutional*'. *Premium Times News paper* (Nigeria 20 May 2021).
- Chukwumerije, D., '*No Culture is Older than Being Human*' TEDx Talk Maitama, Abuja, 26th September, 2017. Accessed 16th April, 2021.
- Erhardt, D., '*Indigenship, bureaucratic discretion and institutional change in Northern Nigeria*'. Leiden University, *African Affairs*, Volume 116, Issue 464, July 2017.
- <https://www.amnesty.org> Discrimination@2021 Amnesty International. Accessed 25th April, 2021. 11:46pm.
- Focus on Central Region Tiv, Jukun clashes*, *The New Humanitarian Conflicts Reportage*. October 2001.
- Hohfeld, W. N., '*Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*'. '*Little Rock School Desegregation (1957)*' Martin Luther King Jr Research and Education Institute, Stanford.
- Mintz, S, '*Historical Context: Facts about the Slave Trade and Slavery*'. '*Greensboro Lunch Counter Sit in*', *African American Odyssey*. The Martin Luther King Jr Research and Education Institute, Stanford.

'Outrage as Police Sack Single Female Cop for getting pregnant'. Punch Newspaper, 27th January, 2021.

'Little Rock School Desegregation (1957)' Martin Luther King Jr Research and Education Institute, Stanford.

Martin Luther King Jr and the Global Freedom Struggle. National Humanities Centre, *The Civil Rights Movement (1919-1960s)*.

Ojukwu, C and Onifade, C.A. *A Deadly Cycle: Ethno-Religious Conflicts in Jos, Plateau State, Nigeria*. 2010.

The Guardian Newspaper, 12th May, 2021. 4:25pm www.guardiannigeria.org.

Yale Law Journal, Volume 3, Issue 1, pages 16-59, accessed, 4th of April, 2021.