

## **Employment Rights of Women and the Disabled: Curbing Workplace Discrimination\***

### **Abstract**

Many persons, mostly women and the disabled are denied employment or given lowly and poorly remunerated jobs, despite the fact that majority of women can perform a large range of tasks in accordance with the prevailing work norms. Worst still, in event of economic distress, women are usually the first to be discharged and the last to be hired. Therefore, the necessity to ensure that women and the disabled persons have equal opportunities for productive and gainful employment in the open labour market, and be free from any form of work place discrimination is the basis for this paper. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literature from physical and e-libraries. It was observed among others that the Nigerian Labour Act does not specifically check the act of work place discrimination against women and the disabled due to the weakness of the prevailing section 54 to 58 of the Act to meet the current reality. It was recommended that the Nigerian legislature should specifically enact law to check the act of work place discrimination against women and the disabled and enforce employment right of women, irrespective of their disabilities, and that the prevailing section 54 to 58 of the Labour Act which provide for women should be repealed for the penalty to meet the current reality. Also, the civil society organizations should accordingly intensify their services in effective sensitization. The significance makes it a pragmatic and deliberate concern of all stakeholders in women's right movement and every meaningful individual to promote justice and equity of women's right in employment and to protect them against workplace discrimination.

**Keywords:** *Employment Right, Women, Disabled, Physically Challenged, Workplace Discrimination*

### **1. Introduction**

Despite statistical existence of unemployment in every country in the world, work continues to be an essential part of the human condition. For many, it represents the primary source of income upon which their physical survival depends. Not only is it crucial to the enjoyment of survival rights such as food, clothing, or housing, it affects the level of satisfaction of many other human rights, such as the rights to education, culture and health. Many persons, mostly women and the physically challenged, are denied employment or given only menial or poorly remunerated jobs. This is true even though it can be demonstrated that with proper assessment, training and placement, the great majority of women can perform a large range of tasks in accordance with the prevailing work norms. In times of unemployment and economic distress, women are usually the first to be discharged and the last to be hired. Therefore, measures are needed to ensure that women have equal opportunities for productive and gainful employment in the open labour market, and be free from any form of work place discrimination.

### **2. The Nature of Workplace Discrimination**

Workplace discrimination, which comes in different forms, generally means that an employee or a job applicant is treated differently or less favorably because of sex, gender identity, or

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sexual orientation.<sup>1</sup> The nature of workplace discrimination is not limited to the sex of the employee being female, it includes the woman's age, disability issue, gender reassignment, marriage or civil partnership, pregnancy and maternity, race or tribe of the woman, as well as her religion or belief. Though they affect all sexes in one way or the other, female sex bear the most brunt of this social bane which infringes their right to freedom of determination. Effects of this nature of discrimination at workplace are both physical and mental on the female employee. They are in the form of depression, developing anxiety disorders, loss of self-control leading to the employee becoming hostile or even attempting suicide. Perceived discrimination has effects on both the employee and the work environment. The resultant effect is on productivity, socioeconomic development and social security. Some marks of workplace discrimination which most often manifest during and after recruitment are manifestly identified based on the discriminator's questions or statements. For instance, asking incongruous and personal questions, offensive comments, jokes, and other forms of communication suggesting discrimination. The answers to such questions or response to the communication could be trap to the employee to rip-off the any consideration for the job or entitlement.

### **3. Examination of Nigerian Legislation in Relation to Employment and Labour**

#### **3.1 Sources of the Legislation**

Nigeria's legal system is based on the English common law, which continues to apply except to the extent it has been modified by statute. In relation to employment, labour, discrimination at labour and termination of employment, the most important statutes are the Labour Act 1974 (LA) (also known as the Labour Decree 1974), as amended, and the Trade Disputes Act 1976 (TDA)

#### **3.2 Scope of the legislation**

All labour law statutes in Nigeria, including the Labour Act and the Trade Disputes Act, apply only to those persons considered employees at common law that is, those employed under a contract of service rather than a contract for services. In addition, both Acts apply only to those employees who are workers. The Labour Act defines a worker as any person who has entered into a contract of service with an employer, whether the contract is for manual or clerical work, or is express or implied, or oral or written.<sup>2</sup> The courts have interpreted this definition to apply only to manual or clerical workers.<sup>3</sup> The Labour Act definition also excludes:

- (i) any person not employed for the purposes of the employer's business (such as domestic staff);
- (ii) persons exercising administrative, executive, technical or professional functions;
- (iii) members of the employer's family;<sup>4</sup>
- (iv) representatives, agents and commercial travellers, to the extent their work is carried out outside the employer's permanent workplace;
- (v) home workers;
- (vi) any persons employed at sea or on an aeroplane, who are governed by specific legislation; and

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<sup>1</sup> Equal Rights Advocates, 'Gender Discrimination at Work' *Online Database* <<https://www.equalrights.org/economic-workplace-equality>> accessed on 22<sup>nd</sup> September, 2022.

<sup>2</sup> Labour Act, section 90.

<sup>3</sup> *NALGO v. Bolton Corporation* [1943] AC 166.

<sup>4</sup> Labour Act, section 21.

(vii) members of the armed forces and police.<sup>5</sup>

The definition of worker in the Trade Disputes Act mirrors the Labour Act's definition, except that it is expressly extended to workers other than manual or clerical workers and to apprentices; furthermore the exceptions listed above do not apply.<sup>6</sup> However, again, members of the armed forces and police are excluded from the Trade Disputes Act.<sup>7</sup>

### **3.3 The Concept of Contracts of employment**

Contracts of employment may be either contracts for an indefinite period or for a fixed term or fixed amount of work.<sup>8</sup> The common law position that contracts for a fixed term or fixed amount of work expire according to their terms is provided under section 9(7)(a) of the Labour Act and this rule has not been modified by statute, nor is there any further statutory regulation of fixed-term contracts.<sup>9</sup> Probationary periods are possible, although, as the statutes do not exclude probationary employees from their ambit, the statutory notice periods also apply to probationary employees. The term "casual worker" has no legal significance in Nigeria.<sup>10</sup>

### **3.4 Termination of Employment**

Termination of employment other than at the employer's initiative is largely governed by common law. Contracts of employment may be terminated, other than at the employer's initiative, by:

- (i) mutual agreement, either by an agreement as to the term of the contract or an agreement that employment should end;
- (ii) frustration by a supervening event;
- (iii) the employee resigning by giving the requisite notice; and
- (iv) the death of the employee.<sup>11</sup>

Section 10 of the Labour Act codifies the common law position that an employee's contract of employment may not be transferred from one employer to another without the employee's consent. In addition, it requires authorization of any transfer of employment by a government labour officer, who may also require a medical examination.

### **3.5 Dismissal**

There is no general statutory principle against unfair dismissal in Nigeria and the law of dismissal is largely governed by the common law, as affected by the Labour Act. However, a dismissal may constitute a "trade dispute" under the TDA, in which case the worker concerned may bring a claim to the National Industrial Court (NIC) under that Act.<sup>12</sup> Notably, it is far from clear from the statutory definition of "trade dispute" in the TDA as: "any dispute between employers and workers ... which is connected with the employment or non-employment of any

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<sup>5</sup> Ibid, section 88(2).

<sup>6</sup> Trade Disputes Act, section 47.

<sup>7</sup> Ibid, section 48.

<sup>8</sup> ILO Natlex Nigeria, 2010.

<sup>9</sup> Ibid.

<sup>10</sup> ILO Natlex Nigeria, 2010.

<sup>11</sup> Labour Act, section 9(7).

<sup>12</sup> National Industrial Court Rules, 2007.

person”<sup>13</sup> Thus, claims relating to dismissals are covered by the Act, and in practice the National Industrial Court has exercised jurisdiction over dismissal claims. There is, however, little statutory guidance as to the standard the NIC is to apply in adjudicating trade disputes involving a dismissal. Its remedial jurisdiction is simply being to “make awards to settle trade disputes.”<sup>14</sup> There are specific statutory prohibitions against dismissal on the grounds of union membership and activity<sup>15</sup> and pregnancy and taking maternity leave.<sup>16</sup> In addition, the common law has developed the concept of a “constructive dismissal” (i.e. behaviour by the employer which is intolerable, and which forces the employee to resign, and which is deemed to be a dismissal) and, as part of the common law, this concept is part of Nigerian law. Section 11(5) of the Labour Act expressly retains the common law right of an employer to summarily dismiss an employee for serious misconduct. The Labour Act also retains the employer’s ability to dismiss on the grounds of redundancy<sup>17</sup>, although this section also introduces certain procedural requirements for redundancies. “Redundancy” is defined by section 20(2) of the Labour Act to be “an involuntary and permanent loss of employment caused by an excess of manpower”.

### **3.6 Notice and Prior Procedural Safeguards**

Section 11 of the Labour Act sets out statutory minimum notice periods as follows:

- (i) for less than three months of service, one day;
- (ii) for three months to two years of service, one week;
- (iii) for two to five years of service, two weeks; and
- (iv) for more than five years of service, one month.

The above periods are statutory minima which can be improved upon by collective agreements or contracts of employment. Payments in lieu of notice are permissible, and either party may waive the right to notice.<sup>18</sup> For dismissals for misconduct, the common law rule that employers who, with full knowledge of the employee’s conduct, condone such conduct, cannot thereafter rely on the conduct to justify a summary dismissal.<sup>19</sup> However, the common law rule that misconduct discovered after dismissal may justify the dismissal also applies.<sup>20</sup> There are no statutory requirements as to procedure for dismissals for misconduct, although a breach of any contractual procedure may constitute a breach of contract leading to an award of damages. Likewise, there are no statutory procedural requirements for dismissals on the grounds of unsatisfactory performance. For dismissals on the grounds of redundancy, section 20 sets out the following procedural requirements:

- (i) the employer is to inform the trade union or worker’s representative of the reasons for and anticipated extent of the redundancies;
- (ii) the principle of last in, first out is to be applied, subject to factors of merit, including skill, ability and reliability; and
- (iii) the employer is to use his or her best endeavours to negotiate redundancy payments.

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<sup>13</sup> Trade Disputes Act, section 15(1)(a).

<sup>14</sup> *Ibid.*

<sup>15</sup> Labour Act, section. 9(6)(b).

<sup>16</sup> Labour Act, section 53(4).

<sup>17</sup> *Ibid.*, section 20.

<sup>18</sup> *Ibid.*, section 11(6).

<sup>19</sup> *ECN v. Nicol* [1968] All NLR 201.

<sup>20</sup> *Clouston v. Corry* [1906] AC 122.

### 3.7 Severance Pay

There is no general statutory severance pay, although there is provision for the Minister of Labour to enact regulations providing for severance pay to redundant workers (pursuant to sec. 20(2) of the Labour Act). In addition, the NIC has, on occasion, awarded severance pay, as additional compensation, to unfairly dismissed workers.

### 3.8 Avenues for redress

Claims for wrongful dismissal or breach of contract may be brought in the civil courts, although such claims are limited to damages for the equivalent amount that the employee would have earned during the notice period, and generally exclude reinstatement and damages for injured feelings.<sup>21</sup> In addition, as discussed above, a dismissed employee may submit a trade dispute to the NIC, and the NIC has a wide discretion as to remedies, including reinstatement. The resolution process for trade disputes can also include conciliation provided by the government.

## 4. The Nigerian Labour Law in Relation to Employment Rights of Women in Nigeria

This section shall specifically study the provisions of the Labour Act which concern women, in terms of women's rights to employment, labour, retention and dismissal. The Act extensively devotes five sections to women in these milieus. These are maternity protection right<sup>22</sup>, right against night work<sup>23</sup>, right against underground work<sup>24</sup>, regulations guiding enforcement<sup>25</sup>, and offences<sup>26</sup>. These sections are captured as follows:

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

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

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

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

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

*(2) Subsection (1) (c) of this section shall have effect notwithstanding any law relating to the fixing and payment of a minimum wage.*

*(3) No employer shall be liable, in his capacity as an employer, to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement.*

*(4) Where a woman-*

*(a) is absent from her work in pursuance of subsection (1) (a) or (b) of this section; or*

<sup>21</sup> *Addis v. Gramophone Co.* [1908] AC 488

<sup>22</sup> Labour Act, section 54.

<sup>23</sup> *Ibid*, section 55.

<sup>24</sup> *Ibid*, section 56.

<sup>25</sup> *Ibid*, section 57.

<sup>26</sup> *Ibid*, section 58.

*(b) remains absent from her work for a longer period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement and to render her unfit for work, then, until her absence has exceeded such a period (if any) as may be prescribed, no employer shall give her notice of dismissal during her absence or notice of dismissal expiring during her absence.*

*(5) In subsection (1) (d) of this section, "child" includes both a legitimate and an illegitimate child.*

**55.** *(1) Subject to this section, no woman shall be: employed on night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof.*

*(2) Subsection (1) of this section shall not apply to women employed as nurses, in any public or private industrial undertaking or in any agricultural undertaking, nor to women holding responsible positions of management who are not ordinarily engaged in manual labour; and in any proceedings brought under or in connection with the said subsection (1) of this section, it shall be a good defence if it is shown to the satisfaction of the court trying the proceedings that-*

*(a) the night work in question was due to an interruption of work which it was impossible to foresee and which is not of a recurring character; or*

*(b) the night work in question had to do with raw material or materials in course of treatment which are subject to rapid deterioration, and it was necessary to preserve such materials from certain loss.*

*(3) In this section, "night" means-*

*(a) as respects industrial undertakings, a period of at least eleven (or, where an order under subsection (4) below applies, ten) consecutive hours including the interval between ten o'clock in the evening and five o'clock in the morning; and*

*(b) as respect agricultural undertakings, a period of at least nine consecutive hours including the interval between nine o'clock in the evening and four o'clock in the morning.*

*(4) The Minister may by order permit the eleven-hour period mentioned in subsection (3) (a) of this section to be reduced to ten hours on not more than sixty days in any one year in respect of any industrial undertaking if he is satisfied that the undertaking is influenced by the seasons of the year or that the reduction is necessary because of special circumstances.*

*(5) The Minister may by order exclude from the application of this section, those women covered by a collective agreement in force which permits night work for women, but before making such an order the Minister shall satisfy himself that adequate provision exists for the transportation and protection of the women concerned.*

**56.** *(1) Subject to subsection (2) of this section, no woman shall be employed on underground work in any mine.*

*(2) Subsection (1) of this section shall not apply to-*

*(a) women holding positions of management who do not perform manual labour; or*

*(b) women employed in health and welfare services; or*

*(c) women who in course of their studies spend a period of training in underground parts of a mine; or*

*(d) any other women who may occasionally have to enter the underground parts of a mine for the purposes of a non-manual occupation.*

**57.** *The Minister may make regulations prohibiting or restricting, subject to such conditions as may be specified in the regulations, the employment of women in any particular type or*

*types of industrial or other undertakings or in any process or work carried on by such undertakings.*

*58. (1) Any person, who, being the proprietor, owner or manager of any industrial, commercial or agricultural undertaking, contravenes any provision of section 54 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N200 or to imprisonment for a period not exceeding three months, or to both.*

*(2) Any person who employs a woman in contravention of section 55 (1) or 56 (1) of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N100 or to imprisonment for a period not exceeding one month, or to both.<sup>27</sup>*

Obviously, this law is plausible. It covers every salient issue in women employment. In fact, the drafters and the legislative assemblies were highly thoughtful. However, the law was enacted on 1<sup>st</sup> August, 1971. It was very relevant and applicable as at then. But, with the current economic challenges, increase in social vices and security challenges, technological advancement and the rest, it is highly impossible for a 1971 law to have much force in 2023, which is about 52 years after. For instance, section 58 of the Act<sup>28</sup> provides as follows:

*58. (1) Any person, who, being the proprietor, owner or manager of any industrial, commercial or agricultural undertaking, contravenes any provision of section 54 of this Act shall be guilty of an offence and on conviction shall be liable to a **fine not exceeding N200** or to imprisonment for a period not exceeding three months, or to both.*

*(2) Any person who employs a woman in contravention of section 55 (1) or 56 (1) of this Act shall be guilty of an offence and on conviction shall be liable to a **fine not exceeding N100** or to imprisonment for a period not exceeding one month, or to both.*

The provision for a fine of not exceeding N200 and a fine of not exceeding N100 respectively are ridiculous in the current economy. Such amounts have no monetary value in the current Nigerian economy. It is not even up to one-half of a dollar. The status of the sections makes the entire provisions on women employment right to be far reaching, if not completely impossible. The only leverage is where the claimant, applicant, or prosecutor is able to present evidence and canvass argument to move the court to judiciously exercise her discretion to pronounce the alternative sentence of imprisonment for a period not exceeding three months and a period not exceeding one month as the case may be. This is because most employers would naturally avoid being committed to prison for fear of being labeled as ex-convict. However, this is not enough deterrence from checking anarchy. Therefore, the need to amend the Labour Act cannot be overemphasized.

## **5. International and Regional Instruments Relating to Employment Right of Women**

### **5.1 The Right to Work**

Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights provides: "State Parties to the present Convention recognize the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."<sup>29</sup> This provision is has general application and has force of law on the state parties. The right to work is also contained in regional instruments. Article 1 of the European Social Charter

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<sup>27</sup> Labour Act.

<sup>28</sup> *Ibid.*

<sup>29</sup> International Covenant on Economic, Social and Cultural Rights, Article 6.

provides that "...everyone shall have the opportunity to earn his living in an occupation freely entered upon."<sup>30</sup> The provision is also concerning all genders and sexes, without restriction. Article 6 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights states that everyone has the right to work. Article 15 of the African Charter on Human and Peoples' Rights provides for a basic "...right to work ... for everybody."<sup>31</sup> Everyone here includes the girl child, even if she is deformed, retarded, or any physical challenge.<sup>32</sup> For instance, rule 7 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, describes under the heading of Employment that the Member States "...should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment."<sup>33</sup> This statement clarifies that women, even with disabilities have a fundamental right to work. Rule 7 also emphasizes that in both rural and urban areas, persons with disabilities, including the women must have equal opportunities for productive and gainful employment in the labour market.

## 5.2 Right to Develop Work Skills

The development of work skills is important for women in that the improvement of work skills enhances independence and builds self-esteem. Needless to say, the development of skills through vocational training increases the opportunities for women around the world. Such vocational training would impact them with skills for services which include vocational assessment and guidance, vocational training, placements and follow-up. This is not withstanding whether the woman is disabled or not. Therefore, paragraph 6 of the Declaration on the Rights of Women states that "...women have the right to education, vocational training and rehabilitation, which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration."<sup>34</sup> According to Article 1 (5) of the Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources provides that States are to implement programmes and policies to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work.<sup>35</sup> More specifically, the Convention provides that States shall "...adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training."<sup>36</sup> Article 3 (1) specifically refers to women:

*Each Member shall gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive*

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<sup>30</sup> European Social Charter, Article 1.

<sup>31</sup> African Charter on Human and Peoples' Rights, Article 15.

<sup>32</sup> Concerning persons with disabilities specifically, the Declaration on the Rights of Mentally Retarded Persons in Paragraph 3 states that persons with disabilities have "...the right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities." Similarly, Paragraph 7 of the Declaration on the Rights of Disabled Persons states that persons with disabilities have the "...right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation". Also, Paragraph 132 of the World Programme of Action concerning Women consists of a list of services that should be provided by Governments to ensure that women have equal opportunities for productive and gainful employment.

<sup>33</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, rule 7.

<sup>34</sup> Declaration on the Rights of Women, paragraph 6

<sup>35</sup> ILO Convention, No. 142

<sup>36</sup> Ibid, Article 1.



*information and the broadest possible guidance are available to (...) handicap and women.*<sup>37</sup>

The Recommendation concerning Vocational Rehabilitation (ILO Recommendation No. 99) outlines various principles and methods of vocational guidance, vocational training and placement of women. Paragraph 2 provides that vocational rehabilitation services should be made available to all women. Paragraph 3 states that "...all necessary and practicable measures should be taken to establish or develop specialized vocational guidance service for women requiring aid in choosing or changing their occupations." Paragraph 5 states that the principles, measures and methods of vocational training generally applied in the training of non-women should apply to women in so far as medical and educational conditions permit. The Recommendation concerning Vocational Rehabilitation and Employment aims to encourage Members to improve vocational rehabilitation and employment assistance for women. Article 15 and articles 31 to 37 emphasize the important role of employers' and workers' organizations and the community itself in vocational rehabilitation and employment assistance. Article 20 provides that particular efforts should be made to ensure that vocational rehabilitation services are provided for women in rural areas and remote communities at the same level and on the same terms as those provided for urban areas. Part VII concerns the contribution of women and their organisations to the development of vocational rehabilitation services. Article 38 outlines suggested measures to be taken to involve women and their organizations in the development of vocational rehabilitation services. Rule 19 (3) of The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides states that "*States should develop training programmes in consultation with organisations of persons with disabilities, and persons with disabilities should be involved as teachers, instructors or advisers in staff training programmes.*"<sup>38</sup> Paragraph 4 (1) of the Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Recommendation No. 150) provides that "*Members should adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.*" Paragraph 5 (1) provides that Member States should establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the formal education system or outside. Paragraph 5 (2) ensures that all have access to vocational guidance and vocational training. Paragraph 7 (1) provides that Members should aim to provide appropriate programmes for all handicapped and women. Particular attention is paid to persons with disabilities in Chapter VII: "*Whenever they can benefit by it, women should have access to vocational guidance and vocational training programmes provided for the general population. Otherwise, specially adjusted programmes should be provided.*"<sup>39</sup> Article 9, 10 and 15 of the European Social Charter enunciate a right to vocational guidance and training. Article 9 provides that States should "...provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity...". This assistance should be available free of charge, both to young persons, including school

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<sup>37</sup> Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources, Article 1(5).

<sup>38</sup> The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 19(3).

<sup>39</sup> Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Recommendation No. 150).

children, and to adults. Article 10 states: "... *the Contracting Parties undertake: To provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude.*" Article 15 outlines the right of persons with physical or mental disabilities to vocational training, rehabilitation and social resettlement.

### **5.3 Equitable Recruitment Measures and Policies**

Fair employment policies must include the recruitment of persons with disabilities, including women. The recruitment of women with disabilities necessitates the possibility for women with disabilities to work at a level corresponding to their abilities, and attention to be integrated into the workforce. This should involve measures to ensure access to employment by direct recruitment, and to ensure higher numbers of workers with disabilities in the free labour market. For recruitment policies to be fair for persons with disabilities, they must also positively encourage their employment. In fact, affirmative action policies are necessary measures in order to ensure equal opportunities for women to compete on an equal basis with all persons. The definition of discrimination in article 1 of the Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111) does not specifically include a distinction based on the disability of a person. However, under article 1 (2), the term discrimination includes:

*...such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations....*<sup>40</sup>

Thus, discrimination on the ground of disability can be within the provisions of the Convention, if so determined by the Member. Article 5 of the Convention emphasizes the taking of special measures for the protection of women in employment:

*Any member may after consultation with representative employers' and workers' organizations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex and disablement, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination.*<sup>41</sup>

### **5.4 Right of Women with Disability under Employment**

It is common that women with disability face the burden of being employed and to be free from work place discrimination due to their disability. This is notwithstanding whether the disability occurs in the pendency of the work, from the risk of the work, in active service, under official capacity or not. In fact, disability, irrespective of happening in the official capacity of the work, makes the woman to be neglected, scorned, discriminated from assignment of certain functions, as well as other associated challenges. The Convention Concerning Vocational Rehabilitation and Employment (ILO Convention No. 159) outlines the rights of persons with disabilities to appropriate training and employment, not only in specialized institutions and workshops, but

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<sup>40</sup> Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111), Article 1(2).

<sup>41</sup> *Ibid*, Article 5.

alongside non-disabled people in mainstream training centers and in open labour markets.<sup>42</sup> The Convention stipulates that employers' and workers' organizations, together with Governments and organizations of women share responsibility for helping women to realise their rights. Article 7 states: "*The competent authorities shall take measures with a view to providing and evaluating other related services to enable women to secure, retain and advance in employment...*" Article 4 clarifies that positive action undertaken to equalize opportunities for disabled workers cannot be regarded as discrimination against non-disabled workers. Articles 2 and 5 provide that organizations of employers and workers shall be consulted on the implementation of national policies on vocational rehabilitation and employment of women. Article 8 states that measures shall be taken to promote the establishment and development of vocational rehabilitation and employment services for women in rural areas and remote communities. The Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) contains a description of recruitment policies. Also, the Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons) describes a duty for States to support full access to the open labour market through recruitment policies (paragraph 11 (a)). It also recognizes that this is not always possible and includes: "*Appropriate government support for the establishment of various types of sheltered employment for women for whom access to open employment is not practicable*"<sup>43</sup> Article 15 (2) of the European Social Charter provides that:

*State Parties ... must provide adequate measures for the placing of women in employment, such as specialised placing service, facilities for sheltered employment and measures to encourage employers to admit women to employment.*<sup>44</sup>

This international instrument appeals to states under the European character. In this case, Nigerian women are covered. The Recommendation concerning Vocational Rehabilitation of the Disabled outlines various methods of widening employment opportunities and sheltered employment for persons with disabilities which includes women. Paragraph 28 states that "*...measures should be taken, in close co-operation with employers' and workers' organisations, to promote maximum opportunities to secure and retain suitable employment.*" Paragraph 29 states that measures should be based on the principles that: Women should be afforded an equal opportunity with the non-disabled to perform work for which they are qualified; women should have full opportunity to accept suitable work with employers of their own choice; and emphasis should be placed on the abilities and work capacities of women and not of their gender. Paragraph 30 specifies that the measures to be taken include research designed to analyse and demonstrate the working capacity of women and widespread and sustained publicity. Paragraphs 32 and 35 specially deal with sheltered employment. Paragraph 35 of the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability states that the opportunities of employment:

*...can be promoted, primarily, by measures relating to employment and salary standards that apply to all workers and secondarily by measures offering special support and incentives. In addition to formal employment, opportunities should be broadened to include self-employment, co-operatives and other group income-generating schemes.... Where special national employment drives have been launched*

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<sup>42</sup> Convention Concerning Vocational Rehabilitation and Employment (ILO Convention No. 159), Article 3.

<sup>43</sup> *Ibid*, paragraph 11 (b).

<sup>44</sup> European Social Charter, Article 15(2).

*for youth and unemployed persons, women should be included. Women should be actively recruited, and when a disabled candidate and non-disabled candidate are equally qualified, the disabled candidate should be chosen.*<sup>45</sup>

The World Programme of Action concerning Disabled Persons states in paragraph 128 how Member States should "...adopt a policy and supporting structure of services to ensure that women in both urban and rural areas have equal opportunities for productive and gainful employment in the open labour market." Paragraph 129 consists of proposed methods in which States can support the integration of women into open employment. Paragraph 131 concerns co-operation at the central and local level between Government and employers' and workers' organisations "in order to develop a joint strategy and joint action with a view to ensuring more and better employment opportunities for women." And, "[w]hen acting as employers, central and local Government should promote employment of women in the public sector. Laws and regulations should not raise obstacles to the employment of women."<sup>46</sup> The Standard Rules on the Equalization of Opportunities for Persons with Disabilities ask States and other organizations to support the aim of ensuring such recruitment policies. Paragraph 7(2) provides that States should actively support the integration of persons with disabilities into open employment and lists ways in which States could fulfill this aim. Rule 7 (6) proclaims: "States, workers' organizations and employers should co-operate to ensure equitable recruitment and promotion policies..." Rule 7 (7) summarizes: "The aims should always be for persons with disabilities to obtain employment, small units of sheltered or supported employment may be an alternative. It is important that the quality of such programmes be assessed in terms of their relevance and sufficiency..." Rule 7 (8) adds that "...measures should be taken to include persons with disabilities in training and employment programmes in the private and informal sectors."<sup>47</sup>

### **5.5 Safeguards of Fair and Equitable Employment Conditions**

To realize equitable rights for persons with disabilities, especially in the area of work, it is necessary to enforce international norms dealing with equitable employment conditions and fair wages. Equitable employment conditions include special measures to ensure that persons with disabilities can perform their work effectively and safely in appropriate conditions. Paragraph 7 of the Recommendation concerning Vocational Rehabilitation and Employment (Women) provides that "...women should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment...". Paragraph 10 proclaims that "...measures should be taken to promote employment opportunities for women, who conform to the employment and salary standards applicable to workers generally." Paragraph 11 provides a wide range of possible measures, which should be adopted. The International Covenant on Economic, Social and Cultural Rights, states in article 7 that States recognize the right of everyone to the enjoyment of just and favourable work conditions. This includes four main components: remuneration; safe and healthy working conditions; equal opportunity to be promoted to an appropriate higher level; rest, leisure and reasonable limitation of working hours, as well as periodic holidays with pay and remuneration for public holidays.<sup>48</sup> Protection of conditions of work is also provided by the European Social Charter in articles 2 and 3.<sup>49</sup> The

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<sup>45</sup> Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, Paragraph 35.

<sup>46</sup> World Programme of Action concerning Disabled Persons, paragraph 133.

<sup>47</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, rule 7.

<sup>48</sup> International Covenant on Economic, Social and Cultural Rights, Article 7.

<sup>49</sup> Protocol of San Salvador, article 7.

Recommendation Concerning Vocational Rehabilitation of women states in Paragraph 25 that women should not be discriminated against in respect of wages and other conditions of employment if their work is equal to that of non-disabled persons.<sup>50</sup> The Standard Rules for the Equalization of Opportunities for Persons with Disabilities provide in Rule 7 several different measures, which should be adopted to realize and ensure fair and equitable employment conditions. Rule 7(3) provides that States' action programmes should include:

*Measures to design and adapt workplace and work premises in such a way that they become accessible to persons with different disabilities; support for the use of new technologies and the development and production of assistant devices, tools and equipment for persons with disabilities to enable them to gain and maintain employment; and provisions of appropriate training and placement and ongoing support such as personal assistance and interpreter services.*<sup>51</sup>

The World Programme of Action concerning Women links recruitment policies with "measures to improve the work environment" (paragraph 131). It also describes in several paragraphs measures which should be adopted to ensure work protection and avoid work-related injury/illnesses. Paragraph 95 of the Programme states that:

*...the technology to prevent and control most disablement is available and improving but is not always fully utilized. Member States should take appropriate measures for the prevention of impairment and disability and ensure the dissemination of relevant knowledge and technology.*<sup>52</sup>

The Report on Disability Prevention and Rehabilitation<sup>53</sup> gives an overview of rehabilitation services, rehabilitation technology and the problems which are combined with such a task, for example organization, manpower or administrative problems.

## **6. Conclusion and Recommendations**

This paper holistically examined employment right and workplace discrimination in relation to the Nigerian women. It is a salient issue in the feminist jurisprudence. In other words, the movement for women's right is not complete without addressing the issues relating to women's employment right and the bedeviling discrimination in their workplace attributed to their sex. Therefore, this paper has explored the relevant Nigerian legislation as well as the international and regional instruments in this milieu. The intricacies and maneuverings in employment which negatively impact on women wellbeing are exposed with quest for a leeway. Sequel to the foregoing, it is recommended that Nigerian legislature should specifically enact law to check the act of work place discrimination against women in Nigeria and enforce employment right of women, irrespective of their disabilities. That is to say, the prevailing section 54 to 58 of the Labour Act which provide for women should be repealed for the penalty to meet the current reality. Furthermore, the civil society organizations should accordingly intensify their services in effective sensitization. Finally, it should be a pragmatic and deliberate concern of all stakeholders in women's right movement and every meaningful individual to promote justice and equity of women's right in employment and to protect them against workplace discrimination.

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<sup>50</sup> Recommendation Concerning Vocational Rehabilitation of Women, paragraph 25.

<sup>51</sup> Standard Rules for the Equalization of Opportunities for Persons with Disabilities, rule 7(3).

<sup>52</sup> World Programme of Action, paragraph 95.

<sup>53</sup> WHO Expert Committee, Disability Prevention and Rehabilitation (WHO, Geneva, 1981).

