

GENDER AND COLLECTIVE BARGAINING IN THE WORK PLACE **

ABSTRACT

In low-income countries, Nigeria inclusive, majority of women are locked into relatively low-productivity work. Persistent inequality between women and men constrains a society's productivity and ultimately slows its rate of economic growth. Although this problem has been generally recognized, evidence on the need for corrective action is more compelling today than ever and this can be attained via collective bargaining strategy. This is so because women workers encounter specific problems at workplace which include maternity, (un)equal pay, sexual harassment, double burden of domestic work, wage labour and other challenges of decent work which requires a given attention in the front burner of decision-making processes. Against the background of the above, this paper examines the issues of gender and decent work issues particularly within the context of collective bargaining. This paper therefore aims to stimulate creative solutions to the problem of gender inequality and decent work issues by highlighting discrimination in the field of work and the significance of decent work in light of the fact that gender inequalities within the workforce affect market outcomes and this feed back into decision making. This process is re-enforced by inequalities in access to assets and services beyond the household. Improving the relative status of female workers and increasing their access to assets and services will increase the returns to investment in human resources and improve the prospects for sustainable economic growth. This is achievable and realizable through collective bargaining.

Keywords: Gender, discrimination, legislation, collective bargaining

INTRODUCTION

Collective bargaining constitutes a major instrument for promoting equal opportunities in the workplace.¹ However, introducing gender issues within the collective bargaining process is gradually beginning to gather momentum and recognition in sub-Saharan Africa in general and Nigeria in particular. The main reasons for this lag is the fact that women workers are less covered by collective bargaining processes, because they are over-represented in the most precarious sectors of the labour force and the least regulated segments of the job market, the lack

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¹ Hepple, B.A. & Hoggins Employment Law, 4th Ed, London, Sweet & Maxwell, 2014

of women among union leadership and on bargaining teams, the lack of training of workers of both sexes to negotiate equal opportunity clauses covering opportunities and treatment and the still low priority that unions assign to these issues within their strategies.

Socially constructed gender roles, the biological differences between men and women, and how these interact in the world of work are at the core of decent work.² The International Labour Organisation Constitution foresaw the need for workplace equality, and this was strongly reaffirmed at the International Labour Organization Declaration on Social Justice for a Fair Globalization³, adopted at the International Labour Conference (ILC)⁴, where the theme “Gender equality at the heart of decent work”⁵ was chosen for a general discussion by the Conference in 2009.

It has been over 20 years since gender equality was the topic of a general discussion by the International Labour Conference; the last time was in 1985, when the subject “Equal opportunities and equal treatment for men and women in employment” was debated.⁶ Whilst globally the issue of debate and gender equality is crucial and a source for serious debate, Nigeria as an entity in Africa has not aligned itself with the global trend thereby making the issue of gender in Nigeria a myth.

This situation is not applicable to Nigeria alone but all over the world as virtually every country, women face multiple forms of discrimination in both policy and practice on a daily basis. Young women find it particularly difficult to enter the labour market as employers tend to favour young

² Gender roles are defined by social groups and cultural traditions. They greatly affect the world of work and condition which activities, tasks and responsibilities are perceived as appropriate to men and women. These divisions of labour are formed by age, race and ethnicity, religion and culture and are also influenced by socio-economic class and the political environment. They change over time. The biological differences in the sexes are governed by their singular physiological attributes, such as female and male musculoskeletal builds or their reproductive functions. These differences clearly have a bearing on the world of work. ILO: *ABC of women workers' rights and gender equality*, second edition (Geneva, 2017), p. 89 ff.

³ The International Labour Organization, 2018 Declaration.

⁴ 97th Session in 2018.

⁵ The agenda item was proposed to the ILO Governing Body at its 298th Session (March 2007) in document “Agenda of the 98th Session (2009) of the International Labour Conference” (GB.298/2, point 6, para. 75). The ILO Governing Body took the decision to select this agenda item, as reflected in the minutes of the 298th Session (GB.298/PV, para. 57(ii)).

⁶ ILO: *Equal opportunities and equal treatment for men and women in employment*, Report VII, ILC, 71st Session, Geneva, 1985 (referred to hereinafter as the 1985 report).

men. The gender pay gap remains a reality even in those countries with the most advanced legislation on nondiscriminatory matters. It is difficult for women who leave the labour market to care for their children to re-enter it when their children are older. And due to their often-disrupted career, women tend to be over represented among the low-income elderly. The situation of women from developing countries is certainly among the least advantageous. To this end this work seeks to extensively look at the issues of gender as it relates to decent work and collective bargaining globally. The study also shows the link between poverty, gender and decent work. It examines how to support the employment and empowerment of women in the context of a global labour market in which work is increasingly feminized, informalized and precarious. It argues that employment is a major route out of poverty and that decent work should be a key ingredient of poverty reduction strategies.

GENDER AND COLLECTIVE BARGAINING DEFINED

Definition of concepts

Collective bargaining is an important area for promoting equal opportunity at work. Through this process, unions can ensure basic conditions for equality. These include equal wages for work of equal value, guarantees and extension of legal protection for maternity, along with other rights that promote a better balance between work and family responsibilities. In essence, although trade unions press for statutory reforms and act as provident societies in relation to their members, their chief *raison d'être* is collective bargaining. This is because collective bargaining is the best way of conducting industrial relations.

Decent work

Decent work sums up the aspirations of people in their working lives – their aspirations for opportunity and income; rights, voice and recognition; family stability and personal development; and fairness and gender equality.⁷ Decent work lies at the heart of efforts to reduce poverty and comprises four strategic objectives:

- Employment and income opportunities;
- Fundamental principles and rights at work and international labour standards;

⁷ International Labour Organization available at <http://www.ilo.org> assessed on 19/11/2010.

- Social protection and social security;
- social dialogue and tripartism.

Ordinarily, gender is an English word for classifying nouns into male, female or neuter. However, its present usage specifically refers to the social construction of the relations between male and female in terms of roles such that certain roles are seen as exclusively females and others for males. It refers to social differentiation or cultural distinction between males and females and the attribution of certain roles on the basis of that differentiation. It seeks to explain the apparent commonality in the relations between male and female in terms of roles in power sharing, decision-making, division of labour and remuneration on labour both at home and in the work place⁸. To properly locate and appreciate the thrust of this paper, it is imperative that we understand the meanings of gender and collective bargain. This is profound and paramount because many people assume rather wrongly that certain words or phrases have settled meanings; when in fact they wallow in street definitions or assumptions. Therefore, for deep understanding of this concept we must look at it in terms of the social construction and the allocation of roles and expectations to men and women in any given society.

Gender as defined by the Collins English Dictionary is⁹

Any categories, such as masculine, feminine, neuter, or common, within such set.

Collective bargaining is a term that has been used by Sydney and Beatrice Web to describe negotiations on conditions of service and terms of employment between employers and workers or between employers associations and trade unions. It covers all arrangements in which workers do not negotiate with employers by themselves but do so collectively through their representatives. The issues covered by such collective bargaining are always very extensive and they include wages, hours of work, increments, promotions, job grading and classification,

⁸ Idyorough A.E. Gender: Concepts and Issues in Nigeria (First Published) (Benue: Aboki Publishers, 2018) p. 1

⁹ Collins English Dictionary (Desktop Ed.) (Glasgow: Harper Collins Publishers, 2005) p. 644

annual leave and so on.¹⁰ Collective Bargaining is the simplest means of resolving conflicting interests between union and management. Where an agreement emerges, it embodies the original offer by management and the original demand by the union which establishes what is regarded as industrial jurisprudence in the work place.¹¹ Collective Bargaining can be defined as:

*A process whereby workers and employers enter into discussions and consultations with a view to arriving at collective agreements aimed at regulating working conditions.*¹²

Whilst the Collins English Dictionary also defines Collective Bargaining as:

*Negotiation between a trade union and an employer or an employers' organization on the incomes and working conditions of the employees.*¹³

And the Blacks Law Dictionary also defines Collective Bargaining as:

*Negotiations between an employer and the representative of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits*¹⁴.

Collective bargaining was defined by the Act as the process of arriving or attempting to arrive at a collective agreement while collective agreement means, “an agreement in writing regarding working conditions and terms of employment between;

¹⁰ Okolie C.N. “Trade Unionism, Collective Bargaining And Nation Building”: (The Nigerian Experience) p. 140

¹¹ Nwoke, F. C., “The Legal Framework of Trade Unionism and Industrial Relation in Nigeria”, in The Advocate, a Journal of the Law Students Society of the Faculty of Law, University of Jos; LSJ (Vol. 9) 2019 p. 83.

¹² Aturu, B., *Nigerian Labour Laws: Principles, Cases, Commentaries and Materials* (Lagos: Frankad Publishers, 2017) p. 226.

¹³ *Collins English Dictionary (Desktop Ed.)* (Glasgow: Harper Collins Publishers, 2005) p. 316; Lanre Omole: *Contemporary Issues in Collective Bargaining in Nigeria* (2004) Cadalad Nig Ltd: 143; Tayo Fashoyin: *Collective Bargaining in the Public Sector in Nigeria* (Lagos) Macmillan pub 2014 :205; Augustus Gbosi: *Trade Unions and Collective Bargaining in Nigeria*: paragraphic pub. 2015 : 67; Tayo Fashoyin: *Industrial Relations in Nigeria: Development and Practice*, Longman Publishers, 2015: 102; Oyekan Arije: *Management Industrial Relations and Collective Bargaining in Nigeria, Evolution and Decline, Problems and Panacea*, Fadec Pub. 2016: 105; Patrick Oribabor: *Recent Trends in Collective Bargaining in Nigeria*, in *Industrial Relations Journal*, vol. 15, Issue 4, 2016, 47-55; Kiely Caisley : *Collective Bargaining: An Overview*, 2016: 200.

¹⁴ Garner, B.A. (ed.) *Black's Law Dictionary* (9th Ed.) (St. Paul, Minn. : Thomson Reuters, 2009) p. 299

- a. *an organization of workers or an organization representing workers (or an association of such organization of the one part and*
- b. *an organization of employers or an organization representing workers (or an association of such organizations) of the other part.*¹⁵

The above definition therefore presupposes that collective bargaining or agreement is an arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the following matters, viz

- i. terms and conditions of employment, or the physical conditions of work;
- ii. engagement, non-engagement, termination or suspension of one or more workers;
- iii. work demarcation;
- iv. discipline;
- v. trade union membership (or non-membership) of a worker;
- vi. facilities for trade union officials; and
- vii. negotiating or consultative machinery and other procedures concerning the above matters including the recognition of a trade union.¹⁶

RIGHT TO EMPLOYMENT

The African Union (AU) saw the need to call for gender equality in decision making by recognizing that gender equality is fundamental and an integral part of regional integration, economic growth and social development. The AU developed the AU's strategy for Gender Equality and Women's Empowerment (GEWE) to ensure the inclusion of women in Africa's development agenda. This strategy focuses on women's economic empowerment and sustainable development which can be achieved giving women opportunity in leadership, labour force and other sectors.¹⁷ The African Charter on Human and People's rights on the rights of women in

¹⁵ Section 91, Labour Act, Cap 198, Laws of the Federation, 2014

¹⁶ Drake, C.D. *Labour Law* 3rd ed. Sweet & Maxwell, 2013: p 237

¹⁷ AU strategy on gender equality and women empowerment 2018-2028

Africa requires state parties to combat all forms of discrimination against women through appropriate legislative measures.¹⁸

Article 11 of CEDAW¹⁹ states that women shall have equal rights as men with respect to employment opportunities, choice of profession, promotion and remuneration. The labour Act also stipulates some employment benefits for women thus: In any public or private industrial or commercial undertaking or in any employment 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.²⁰

The section further states that a woman who qualifies for maternity leave under the aforementioned subsection is entitled to at least 50 percent of the basic wages she would have earned if she had not been absent provided she had been continuously employed by the particular employer for at least six months immediately prior to her leave.²¹ In spite of this provision, it is surprising to discover the following provisions in the service conditions governing staff of a university in Nigeria thus “where maternity leave with full pay is granted, a member of staff shall forfeit her vacation leave for the year but not the leave bonus. Where vacation leave with bonus is taken, maternity leave shall be without pay”.

A literal interpretation of this provision means that maternity leave which the law has fixed for twelve weeks cannot be taken in the same year with the annual leave to which every worker

¹⁸ See the Protocol to the African Charter on Human and People’s Rights on the Rights of women in Africa 2003, Article II, IX; Right to equal remuneration for jobs of equal value for women and men, Article XIII(b); Article 14(2), 19(2) of the African Charter on values and Principles of public service and recruitment based on merit, equality and non-discrimination respectively; Article 15, every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for work done.

¹⁹ Convention on the Elimination of all forms of Discrimination against Women adopted by the United Nations in 1985.

²⁰ Section 53 (1) (a) and (b) Labour Act

²¹ Section 53 (1) (c) Labour Act

irrespective of sex who has completed a year's service with the employer is entitled. More startling is the provision that she would have maternity leave without pay where she had already taken her annual leave with bonus. In other words, she loses three months pay for less than one month's pay.

Other provisions are the right of a nursing mother to two and half hours break each day during working hours for the purpose of nursing the child and a right not to be given notice of dismissal during her absence.²² In practice however, these employment benefits are limited by some environmental and socio-economic factors. For instance, there are few nurseries and crèches where working mothers can leave their babies while at work. This therefore makes the provision of the break time insufficient for them to go home, nurse their babies and return to work before close of work for the day.

The right of women to employment is a fundamental right. What is more, women's work makes a significant contribution to economic development in all societies. In addition, investment in gender equity, women's empowerment and decent work for women is vital for achieving economic and social justice, as well as democratic engagement. If women are to share in growth and investments, trade unions and other organizations need to consider the complex relationship between economic empowerment, decent work and social or cultural discrimination. Moreover, the women's agenda in decent work goes far beyond the promotion of equal opportunities and underlines the inequitable differential impact of the labour market on men and women²³ .

Changes in the global environment, including new technologies, economic liberalization, demographic changes and the deregulation of labour markets, have contributed to increasing levels of precariousness and insecurity for workers, especially women. The risks and vulnerabilities faced by working women from low-income households mean that there are special issues to confront when looking at what decent work means for women.

UNIVERSALITY AND INALIENABILITY

²² Section 53 (4) Labour Act

²³ Dale, T.S. *Women's Law: An Introduction to Feminist Jurisprudence*: Norwegian NUM Press, 2012: 205

Human rights are universal and inalienable. Universality means that all people are entitled to human rights at all times. Inalienability means that people cannot voluntarily or involuntarily surrender their own human rights or the human rights of others. For example, a person cannot sell herself or another person into servitude. All individuals are always holders of human rights because “one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated”.²⁴

Numerous international instruments affirm the universality and inalienability of human rights. The Charter of the United Nations requires that all members pledge themselves to the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all.”²⁵ The 1993 Vienna Declaration also aver that “the universal nature of these rights and freedoms is beyond question.”²⁶ Thus, there is no hierarchy of human rights as ultimate goals, they are all equally valuable and mutually reinforcing.

In a holistic human rights approach, policy must be formulated with a view to its impact on the human rights of individuals, families and communities. In the context of the right to decent work, this suggests several possible strategies including: defining decent work in a wholistic manner; recognizing the interdependency of all human rights in regulating for decent work; applying human rights-based methods and tools for policy making; and building coalitions over common concerns by linking the right to decent work with other rights.

Evaluating and monitoring policymaking can contribute to realizing the right to decent work by: raising general awareness of the right to decent work; educating workers, communities, governments and nongovernmental organizations about the right to decent work; providing a framework for systematic data collection to inform policymakers, human rights practitioners, workers’ organizations and others interested in promoting the right to decent work; and

²⁴ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed.(2012):10

²⁵ U.N. Charter arts 55-56

²⁶ Vienna Declaration

generating legally and ethically legitimate policy and program recommendations based on the human rights obligations of governments under international and national laws.²⁷

The international human rights law (ICESCR) is the most comprehensive international treaty on work-related rights such as the right to decent work and provides the legal and ethical framework for policymaking, intended to achieve decent work for all. The ICESCR also includes other articles essential to the protection of human rights such as Article 1 on the right of a person not to be deprived of his/her own means of subsistence, article 2 on the prohibition against discrimination, Article 3 on the equal right of men and women to enjoy the rights in the Covenant.

The CESCR defines decent work as “work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration”. Decent work therefore includes the right to a decent income which will enable workers to support themselves and their families. It also guarantees the right of access to employment and the right not to be unfairly deprived of employment. The right to decent work encompasses all forms of work and is both an individual and collective right.

Globalization and the current economic downturn present tremendous challenges, but also opportunities, for advancing human rights such as the right to decent work.²⁸ The past three decades of neo-liberal policy have led to greater economic inequality and insecurity, adversely affecting the ability of people, especially women, to find decent work to support decent lives.²⁹ Deregulation, privatization, and the desire for labour-market flexibility have resulted in the spread of informal employment, short term contracts, loss of worker voice and representation,

²⁷ Office of the High Commissioner for Human Rights, Report on *Indicators for Promoting and Monitoring the Implementation of Human Rights*, U.N. Doc. HRI/MC/2008/3, (proposing a conceptual and methodological approach for States to select quantitative indicators to be used in their reports on their progress in complying with their obligations under international human rights law); ILO, International Labour Office: Employment Sector, *Guide to the Millennium Development Goals Employment Indicators, including the full set of decent work indicator set* (2013)

²⁸ See Outcome of the Conference on the World Financial and Economic Crisis and its Impact on Development, G.A. Res 63/303, U.N Doc.A/Res/63/303, 2014; see also Irene Khan, “The Unheard Truth: Poverty and Human Rights” 229 (2014):58

²⁹ See Report on the World Social Situation 2007; Diane Elson, Gender Justice, Human rights, and Neo-liberal Economic Policies, in *Gender Justice, Development and Rights*, (Maxine Molyneux & Shahra Razavi eds., 2012) exploring how the adverse impacts of neo-liberal policies are borne disproportionately by women, particularly poor women).

and an increase in income insecurity.³⁰ At the same time, there are significantly fewer social protections available to workers.

According to the Director-General of the International Labour Organization (ILO), the economic crisis is a culmination of decades of unfair globalization and increasing income inequalities in a policy context that minimized the role of the State, and failed to respect the dignity of work and the importance of social protection.³¹

It is no coincidence that this neo-liberal period has coincided with the emergence of economic and social rights back into the mainstream human rights agenda.³² Interest in economic and social rights at both the international and domestic levels has grown rapidly since the late 1980s.³³ One achievement was the adoption by the U.N. General Assembly in 2008 of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR Optional Protocol), which provides the first international complaint mechanism independent of the ILO for violations of economic and social rights, including the right to decent work.³⁴ The advent of the ICESCR Optional Protocol in combination with the current global employment crisis makes it timely to consider the potential for a human rights approach to achieve decent work for all, particularly women.

The work rights covered by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Optional Protocol include among others, the right to freely chosen work,³⁵ the right to full employment,³⁶ the right to fair wages,³⁷ the right to an adequate standard of living,³⁸ the right to safe and healthy working conditions,³⁹ the right to rest and leisure,⁴⁰ the right to form

³⁰ See Report on the World Social Situation 2016, (citing a decrease in collective bargaining as an additional factor contributing to a loss of worker power in the economy).

³¹ See ILO Director-General, *Tackling the Global Job Crisis: Recovery through Decent Work Policies: Report of the Director-General* (2016):14-15

³² Simon Deakin, Social Rights in a Globalized Economy, in *Labour Rights as Human Rights* (Philip Alson ed.,) 2015 29-31

³³ Malcolm Langford, *The Justiciability of Social Rights: From Practice to Theory*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* 1, 2017:7-9.

³⁴ See Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. Res, 63/117, arts. 1-15, U.N. Doc. A/RES/63/117, 2017.

³⁵ International Covenant on Economic, Social and Cultural Rights, Art. 6(1)

³⁶ id

³⁷ Id. art 7(a)(i)

³⁸ Id. Art 11(1)

³⁹ Id. Art 7(b)

and join trade unions,⁴¹ the right to work,⁴² and the right to social security.⁴³ These ICESCR work rights overlap with the pillars of the ILO Decent Work Agenda, as well as with the labour rights in ILO Conventions.⁴⁴ The four pillars of the ILO Decent Work Agenda are: employment promotion; social protection; social dialogue; and rights at work.⁴⁵ The first pillar, employment promotion, corresponds to the right to full employment, which means building the capacity of workers and expanding opportunities for employment. The second pillar, social protection, corresponds to the rights to social security and to safe and healthy work conditions. The third pillar, social dialogue, corresponds to the right to form and join trade unions and the rights of unions to bargain collectively. This pillar also includes democratic participation as a means of securing and defending work-related rights. The fourth pillar corresponds to the ILO four Core Labour Standards: elimination of forced labour, prohibition against child labour, elimination of discrimination in employment, and freedom of association.⁴⁶ These two frameworks, the ILO and the ICESCR – share the aim of protecting work rights and improving the lives of workers and their families.

DISCRIMINATION IN THE FIELD OF WORK

In the work place, the Nigerian woman, indeed African women are likely to be paid as much as their male counterpart in white collar jobs – apart from the menial and domestic servant cadres. However, preference is given to men in the face of competitive jobs because they are perceived to be more stable and reliable at work. This presumption is however, rebuttable in some instances where women have proved to be more capable and competent in effectively combining their home-front duties alongside their professional jobs than their male counterparts in the field of science, engineering, medicine and law.

⁴⁰ Id. Art 7(d)

⁴¹ Id. Art 8(a)

⁴² Id. Art 8(d)

⁴³ Id. Art 9

⁴⁴ Gillian MacNaughton & Diane Frey, *Decent Work, Human Rights and the Millennium Development Goals*, (2016): 346.

⁴⁵ ILO Director-General, Report of the Director-General: Decent Work, 3, (2013).

⁴⁶ ILO Declaration on Fundamental Principles and rights at Work, 2014, 1237-38 (requiring all Members of the ILO to respect these rights regardless of the specific Conventions to which they are party).

Discrimination has been defined as any “discrimination, exclusion or preference made on the basis of race, colour, religion, politics, opinion, natural extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment of occupation”.⁴⁷ The right to freedom from discrimination is also enshrined in the 1999 constitution of Nigeria which provides that “a citizen of Nigeria of a particular.....sex.....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 the other sex 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 executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of the othersex....”⁴⁸

Implicit in the above definitions is that women and men are guaranteed the same treatment, privileges or restrictions where these are legally or socially considered desirable. Therefore any law, any executive or administrative action which is discriminatory to either gender is inconsistent and contrary to the spirit and letter of the constitution and therefore to the extent of its inconsistency unconstitutional, null and void.

Furthermore, Chapter II of the constitution which deals with directive principles of state policy enjoins the State to direct its policies towards ensuring that all citizens without discrimination on any ground whatsoever have the opportunity of securing adequate means of livelihood as well as adequate opportunities to secure suitable employment⁴⁹, that the conditions of work are just and humane⁵⁰, that the health, safety and welfare of all persons in employment are safeguarded and

⁴⁷ International Labour Convention No. 111.

⁴⁸ Section 42(1) of the Constitution of the Federal Republic of Nigeria 1999

⁴⁹ Section 17 (3)(a)

⁵⁰ Section 17(3)(b)

not endangered or abused⁵¹, and that there is equal pay for equal work without discrimination on account of sex or on any other ground whatsoever⁵².

The underlying principles deductible from the above provisions of the constitution is that of equity and equality before the law. Equality of opportunities and equality of reward for work of the same kind performed by both male and female alike. Also contained therein is the right to work without discrimination on grounds of sex or gender. In principle therefore, and in apparent simplicity of the law, women have a right to equal place in the camp, at the council board, in politics, on the bench⁵³ or any other place where decisions are taken and policies are formulated.

Practically however, the position is not that simple as practice can be different from the law and justification for the variation is ingrained in the law itself creating a classical situation of apparent simplicity but underlying complexity in the area of legal rights of women with regard to employment, and this is often reflected in the figures of vacancies declared and filled.

A more fundamental explanation is that at the level of job market, the inequality between male and female resulting from educational backwardness of the female gender becomes pronounced. There are far more qualified men than are women, such that, the imbalance becomes a logical consequence of discrimination in educational opportunities in favour of men.

Moreover, the Nigerian constitution itself contains the seed for both negative and positive discrimination in relation to the employment of women. Whilst prohibiting discrimination on grounds of sex among other considerations, it permits special provisions in favour of special groups on various grounds including sex. Consequently, the law that prohibits employment of women at night and underground work, arms an employer with a legitimate weapon with which to discriminate against the interest group in question, except that the prohibitions do not apply to women within the category of middle and high-level cadres of jobs.⁵⁴

⁵¹ Section 17(3)(c)

⁵² Section 17(3)(e)

⁵³ Forde N., *The Law and the Protection of Women*, 8th Commonwealth Law Conference, Ocho Rios, Jamaica, 1986:10

⁵⁴ Section 54 and 55 Labor Act

THE LEGAL FRAMEWORK AND COLLECTIVE BARGAINING

Elements that could encourage greater equality of opportunity include legislative progress which in most cases should eliminate discriminatory regulations that still persist and explicitly ban discrimination based on sex, among other reasons. National legislation is an important instrument for strengthening the application and enforcing compliance with the law.

Affirmative action to overcome inequality – such as equal opportunity plans, training policies, access to employment systems, performance evaluation, wages and promotions are imperative because a major discrimination faced by working women globally is unequal pay.⁵⁵ Unfortunately, many believe education is the key to closing the gap, but on the contrary, more educated women often find themselves on the wrong side of an even bigger pay gap.

GENDER EQUALITY AND THE DECENT WORK AGENDA

Sustained job-rich growth is needed to create productive and decent employment opportunities for women and men. However, growth must also be inclusive, and needs to be coordinated and coherent at national level. It should be backed by public and private investment, adopt a gender perspective, target specific needs, and be developed with the full engagement of the tripartite constituents. The 2008 Declaration stresses the promotion of employment by creating a sustainable institutional and economic environment in which individuals are enabled to pursue productive work, enterprises generate greater employment and income opportunities for all, and societies achieve their goals of economic development, good living standards and social progress. In the context of Decent Work Country Programs, increasing labour demand, employability and quality of work according to levels of development would be a winning formula against poverty.⁵⁶ But if there is an employment deficit, then the challenge of working out of poverty is even more daunting for women than for men.

⁵⁵ Azuike, H.O. "Some of the Discriminatory Attitudes levied against Women in Society" vol. 6 Federal Ministry of Justice Lagos, p. 259.

⁵⁶ By the end of 2008, there were 53 gender equality country outcomes in the 38 finalized or draft Decent Work Country Programs

Employment policies and active labour market policies are aimed at strengthening the functioning of the labour market to ensure that growth is labour intensive and that quality jobs are created through the development of an appropriate regulatory framework and institutional capacity. Because of the gendered nature of labour markets, specific mechanisms are needed so that gender concerns are mainstreamed in both policy development and policy implementation⁵⁷. Some examples of this are equal opportunity commissions, enterprise codes of practice and gender-responsive budgeting. More specifically, the International Labour Organization's post-conflict reconstruction and employment programs emphasize systematic assessments of opportunities in a sex-disaggregated way and, in their implementation, support both women's and men's efforts to build new social and economic relationships.

A skilled workforce is a necessary condition for inclusive growth and competitive and sustainable enterprises.⁵⁸ Employers have identified the shortage of skills as a primary concern, in particular the need to link the skills required in the labour market to education systems and training for reskilling and upskilling.⁵⁹ Workers have emphasized the importance of social dialogue on training issues and on expanding opportunities for early skills development and lifelong learning in order to sustain employability and improve earnings in the face of technological and market changes. Sex discrimination in skills development is common, and leads to lower pay and occupational segregation for women.⁶⁰ The International Labour Organisation believes that attention to gender equality is particularly important in apprenticeships, community-based training, and the recognition of informally acquired skills. Moreover, the Human Resources Development Recommendation⁶¹, specifically provides that Members should promote equal opportunities for women and men in education, training and

⁵⁷ Ogunniyi O., *Nigerian Labour and Employment Law in Perspectives* 1st ed, London: Filue Publishers, 2016:50

⁵⁸ International Labour Organization: *Skills for improved productivity, employment growth and development*, Report V, ILC, 97th Session, Geneva, 2018.

⁵⁹ International Organisation of Employers (IOE): *Trends in the workplace survey 2018: Enterprises in a globalizing world* (Geneva, 2018), pp. 5–6.

⁶⁰ Ogunniyi op cit. p. 62

⁶¹ 2014 (No. 195)

lifelong learning. Special consideration is being given to employment-intensive infrastructure programs incorporating gender-sensitive strategies.

Generally collective bargaining requires patience by the parties irrespective of the gender bargaining because it is usually long and tortuous and results are normally unpredictable. Decisions are reached after discussions. Such decisions are arrived at by unanimity and parties usually agree that while negotiations are in progress, countries made significant progress toward including issues affecting working women's rights and equal opportunities at work in collective bargaining and 20005. This was one of the main conclusions of a study carried out by the International Labour Organisation. But the major issues regarding decent work, equality and collective bargaining as regards to women in Nigeria as well as the entire African sub region includes extending maternity leave and the period during which pregnant and nursing women cannot be dismissed, the guarantee of full wages to women who take maternity leave, several elements related to child care, extension of nursing periods, leave from work due to children's health care, sanctions for sexual harassment and support for the principles of non-discrimination and equal wages for work of equal value and also ensuring genuine recognition of collective bargaining rights and freedom of association are fundamental to the International Labour Organization's role in promoting social justice, democracy and decent work. Some years ago, in the International Labour Organisation Declaration on Fundamental Principles and Rights at Work, members identified this as an essential instrument in its work, along with eradicating forced labour, child labour, and discrimination⁶².

SIGNIFICANCE OF DECENT WORK

Individuals should be able to have a jobs that enables them to live a good life in which their basic needs are met. Employment is a crucial factor for achieving this objective. This is why government should be advised to work on job creation. Not just any jobs, of course, but decent jobs for everybody. Decent work is the best way to fight poverty because to most people, lack of decent work means poverty. This explains why on October 7th 2019, the trade union movement

⁶² The International Labour Organisation: Collective Bargaining and Gender Equality: <http://www.ilo.org>

organized a World Day for Decent Work. This was an unparalleled opportunity for trade unions and organizations interested in Decent Work all around the world to join a broad global mobilization involving a large number of people and a wide range of activities. In 2008, as part of the Global Campaign “Decent Work, Decent Life for Women”, women in trade unions were at the forefront in organizing events, social dialogue sessions and demonstrations. They focused on decent work for women and in particular on pay equity, ratification of ILC 183 on maternity protection and balancing work with personal life.

The adoption of the United Nations Millennium Development Goals (MDGs) in 2000 placed women’s poverty reduction at the heart of the international development agenda and turned the spotlight on the role of employment as a route out of poverty. Flowing from this, the MDGs progress report called on governments to break the vicious circle of poverty, *inter alia*, by focusing on the creation of additional opportunities for decent work. The report stated that for millions in the world today, jobs provide little relief from poverty because their pay is low. The working poor-employed persons living in households where each member earns less than a dollar a day – make up over half of sub-Saharan Africa’s workers For the most part, women are more likely than men to be in vulnerable employment situations”.⁶³ The report also found that while women have more income-earning opportunities, they are also disproportionately represented in informal jobs and therefore are deprived of job security and benefits. Occupations continue to be gender-specific and female-dominated positions tend to be characterized by an inferior status, lower pay and poorer working conditions.⁶⁴

There is an urgent need therefore, for policy makers to meet the challenge of creating more and better jobs and decent work in order to eradicate poverty.

CONCLUSION

This paper argues that the right to form and join labour unions, the right to collective bargaining, the right to a safe and healthy workplace, and the right against discrimination in the workplace, among other work rights are considered human rights and not merely rights granted by statutes or collective bargaining contracts. This wholistic human rights approach helps to build coalitions

⁶³ The United Nations Millennium Development Goals Report 2008, p. 18

⁶⁴ *ibid*

among individuals and groups that share the common aim of achieving decent work for all, realizing the full panoply of human rights and achieving social justice. Therefore, Nigeria as a party to ICESCR, should define decent work to include the broader human rights dimensions. Furthermore, there are several legislations on gender and decent work in collective bargaining. What is lacking is the implementation of these legislations. Consequently, trade union/employee organizations need to adopt implementation strategies of those legislations with a monitoring and evaluation system.

In addition, concerted effort has been made to bring to the fore the fact that collective bargaining constitutes a major instrument for promoting equal opportunities in the world of work. Union organizations are therefore enjoined to make significant efforts to include gender issues in their ongoing strategies and actions. In a climate in which collective bargaining remains weak, due to the growth of the informal segment and de-regulation of the labour market, the general trend will be to maintain or increase the number of clauses dealing with gender equality as well as expanding their content.

However, introducing gender issues within the collective bargaining process is still in the early stages in Nigeria and Indeed Africa as a continent. The main reasons for this lag is the fact that women workers are less covered by collective bargaining processes, because they are over-represented in the most precarious sectors of the labour force and the least regulated segments of the job market, the lack of women among union leadership and on bargaining teams, the lack of training of workers of both sexes to negotiate equal opportunity clauses covering opportunities and treatment, and the still low priority that unions assign to these issues within their strategies.

Union organizations from Nigeria and African as a whole, however, have made significant efforts in the past to include gender issues in their ongoing strategies and actions. For instance, the main issues involved in negotiations during collective bargaining are – longer maternity leaves and extension of the period during which pregnant and nursing women are protected from

dismissal, guarantees of full wages during maternity leave and re-affirmation of the principles of non-discrimination and equal pay for work of equal value.

Women should have full access to economic life, and their rights to paid employment must be recognized. In compliance with ILO Convention, all discrimination must be eliminated in relation to access to jobs and professions, education, vocational training, promotion at work and job security. This is imperative because women as agents for change play a key role in shaping the welfare of future generations. Therefore, public policies cannot be effective without the participation of the feminine gender who makes up more than half of the country's and indeed the African continent's population and whose views need to be incorporated into policy formulation.

Furthermore, this has been reflected, in many cases, in the greater presence of this issue within negotiating strategies and in the concrete results of collective bargaining. As a result important progress has been made as reflected by advances in maternity protection. In a climate in which collective bargaining remains weak, such as that apparent in several African countries, due, among other factors, to the growth of the informal segment and de-regulation of the labour market, the general trend has been to maintain or increase the number of clauses dealing with gender equality, as well as expanding their content.

Finally, trade unions can play a key role in establishing decent work for women on the agenda of programs. Trade unions have a crucial role as social partners working alongside development programs to help ensure women do not move out of rural poverty into urban exploitation. Therefore, securing decent work is crucial for women and men making it possible for them to build more promising futures for themselves, their families and their communities.