



Chapter 20

Affirmative Action Policy and the Challenge of Female Cabinet Membership in Nigeria: An Analysis from 2019–2023

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Abstract

Affirmative action for women is an outcome of global advocacy for gender mainstreaming in politics and the decision-making process. Through the instrumentality of some gender-friendly treaties, to which many countries – including Nigeria – are signatories, women are to be allotted a certain percentage in all appointments. Thus, women’s visibility in the politics of the modern state is becoming increasingly a yardstick to measure levels of democratisation and sustainability of democracy. Countries across the globe, including the most conservative, are making both minor and radical changes to address gender issues. This explains why the Nigerian Government came up with its National Gender Policy (NGP) to allot 35% to women in all appointments in consonance with some international treaties like the CEDAW to which it is a signatory. However, women are still being marginalised in Nigerian politics because of the age-long notion that women are not relevant in public affairs. Also, domestication of gendered affirmative action policy in patriarchal society like Nigeria is problematic because of cultural and misogynistic factors. Methodically, this research is both qualitative and quantitative. Data were collected via a survey and analysed through percentage and tabular presentation. From the perspectives of Political Liberalism and Feminist Legal Theory, it critiques the concept of affirmative

action vis-à-vis women cabinet membership in Nigeria. Its findings reveal that constitutional barriers are the major implementation stumbling block. It concludes that until affirmative action is domesticated, its implementation will be at the mercy of the disposition of government in power towards gender issues. It recommends constitutional reforms to facilitate implementation.

Keywords: Affirmative Action, Marginalisation, Patriarchy, Political Appointment, Women

Introduction

Gender issues are gaining the attention of researchers and policymakers worldwide. This is evident in the ongoing global advocacy for gender equality and women's inclusiveness in government and decision-making processes. Many countries around the globe are making both minor and radical changes to address gender issues. Reforms that revolve around the gender question are gaining ascendancy such that many countries, including the most conservative, do not want to be left behind. It is becoming a yardstick to measure levels of democratisation in democratising states and a measure of sustainability of democracy in the considerably democratised ones. Yet, women are still being marginalised in Nigerian politics. Discrimination against women, as a result of marginalisation, is premised on the age-long notion that they are care-givers, home maintainers, and children breeders who have no business in public affairs. In some socio-cultural settings, women are not supposed to be educated in the first place. So, the need for their participation in public affairs - of general concerns - does not arise. It is also a common place to associate women with evils who are bereft of any progressive ideas. There is even a long debate on the humanness of women.

However, in the course of history, and because of the dynamic nature of time, changes encroached on thoughts and perceptions globally. These changes have, in one way or another, affected the way women think of themselves and how society views them. In addition, women's access to education has drastically improved worldwide. This enables them to realise some of their rights like franchise - the right to vote and to be voted for in elections. Therefore, women weaponise knowledge to challenge many gender-related stereotypes. The knowledge acquired by them, which is a sure path to liberation, has stood them shoulder to shoulder with men in politics and in other spheres. It is this liberation, couched in gender terms, that gives rise to the notion of gender equality. Thus, affirmative action in support of women is a brainchild of advocacy for gender equality.

Yet, implementation of a gendered affirmative action policy in a patriarchal society like Nigeria is problematic because of cultural, religious,

and misogynistic factors. This explains why 35% affirmative action for women in all appointments continues to fail. Nigeria signed many international treaties which highlight the need for gender equality. Most prominent of these treaties is the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) (UN, 1979), which provides that states (countries) should adopt special temporary measures aimed at accelerating equality between men and women. These measures, according to the CEDAW, shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Consequently, Nigeria stipulates 35% affirmative action in support of women in its National Gender Policy (Federal Republic of Nigeria, 2006) – a policy it has failed to implement despite a court ruling which orders implementation. Though affirmative action, as formulated, stipulates women's inclusiveness in all appointments, this study focuses on female cabinet membership across the thirty-six states in Nigeria from 2019 to 2023. It gives the statistics, highlights and analyses the challenges, and then proffers solution in forms of recommendations.

Methodology

This research is both qualitative and quantitative. It critiques the concept of affirmative action from the perspectives of its protagonists and antagonists. Using a secondary source of data collection, it surveyed the number of women appointed into various cabinets by state governors within the timeframe of the study. The population sample method is a census since all states of the Federation including the national government are captured in the study. It made use of percentage and tabular presentation to analyse its data.

Theoretical framework

This study critiques affirmative action vis-à-vis women's cabinet membership in Nigeria from the perspectives of Political Liberalism and Feminist Legal theories. Though each of these theories is, on its own, relevant, and can independently make a case for positive action in support of women, utilising them together is considered more apt. While Political Liberalism views affirmative action from a philosophical or ethical perspective, Feminist Legal Theory, also known as feminist jurisprudence, addresses it from the legal angle.

Political Liberalism is a liberal political concept of justice founded on the thoughts of John Rawls. He coined the concept in order to address the problem of political instability in modern constitutional democracies. It recognises that contemporary democratic states consist of religious, cultural

and ethnic pluralism which are in sharp contrast to one another. It therefore attempts to accommodate these diversities to bring about the common good to be enjoyed in a political community.

The terms 'political liberalism' and 'democracy' are essentially equivalent and entwined; so, almost interchangeable. Mannheim (1991) exemplifies it as 'liberal-democratic' ideology. Political liberalism is therefore a liberal-democratic ideology and institutional system of liberal-secular democracy. It primarily accommodates everyone, including minorities, outcasts (such as ex-prisoners), marginalised groups (such as women), and foreigners. Hence, it fosters the system of universal political liberty, equality, and justice for all where "everyone is entitled to an equal system of basic liberties" [i.e.] the right to *equal* subjective liberties" (Habermas, 2001:71).

On the other hand, Feminist Legal Theory explains the relationship between law and feminism with a focus on some of the ways through which law limits as well as enables socio-political reform (Bartlett & Kennedy, 2018). It thus poses a serious challenge to contemporary law, lawmaking, and legal institutions through the advocacy for the relevance of women in lawmaking after centuries of discrimination and dehumanisation. One major assumption, or rather assertion, of the Feminist Legal Theory is that laws are patriarchally based and androcentrically enacted, which, as a consequence, focus on men to the exclusion of women. This, feminists argue, poses a danger to womenfolk and leads to the suppression of women. This patriarchal basis of law is what the Feminist Legal Theory sets to challenge.

From this perspective, feminists see the oppression of women as the most fundamental and universal form of domination and its aim is to put an end to it. Until women have a say in lawmaking, they argue, they will continue to be consigned to the margins of society. They will neither make any input, nor will they benefit from any output in the form of policy favourable to them (women). To correct this anomaly, feminists aver, reforming the basis of lawmaking to enable significant inputs from women is a *sine qua non*. Gender mainstreaming in lawmaking ensures that women have, to borrow from a feminist theorist Rich (1979:271), "the power-to-create, power-to-think, power-to-articulate and concretize our visions and transform our lives and those of our children." Breaking the glass ceiling in lawmaking is not an easy task. Literature reveals that the major stumbling block to implementing affirmative action in favour of women's representation and/or appointment in Nigeria is the legislator.

With Nigeria being a patriarchal society, feminists will have to walk a tightrope between making demands for reforms that affect women on the

one hand and being forced to work within the conservative and patriarchal structures – which they seek to dismantle – on the other hand. Feminists do also have an identitarian challenge to battle with. For, the whole project of feminism is considered nonsensical in some conservative circles. Despite these challenges, affirmative action and the challenge of female cabinet membership in Nigeria could best be addressed through gender mainstreaming in lawmaking, which Feminist Legal Theory advocates.

Affirmative action: A conceptual clarification

The term ‘affirmative action’ is understood differently in today’s society. It, in most cases, elicits strong feelings – both positive and negative. These feelings arise from a misunderstanding of what affirmative action is all about. Affirmative action has no single definition, though it has existed since the late 1900s (Lederer, 2013). As the name implies, it is literally the practice of “acting affirmatively” according to Kranz, (2002:4):

taking positive, specific steps to overcome the history and current practice of discrimination by having employers, schools, and government contractors make a special effort to include people of color and women in predominantly white and/or male workforces, student bodies, and businesses receiving government contracts.

In his own way, Newman (1989:32) defines it as “any race- or sex- conscious employment practices devised with the intention of redressing past racial or gender imbalances and injustices. Affirmative action programmes may include preferential treatment to members of a targeted class of people.”

Lee (1999:394) defines it as the “proactive policy of making special efforts in employment decisions, college entrance, and other areas of public behavior as a way of compensating for past discrimination.” It is based on the thought that certain groups of people, even in the absence of current discrimination against any individual member of that group, are at a disadvantage in the workplace and on campuses because of the effects of past discrimination against some members of the group. Affirmative action is an attempt to create an environment of equality for whole categories of citizens, and the emphasis is on ‘disadvantaged groups’ rather than ‘injured individuals.’ Though Lee did not mention women as victims, he was general in his definition, and he made an important point in his explanation that the discrimination needs not to be present; the reverberating effects of the past discrimination can possibly create some forms of imbalance in the present. To address these imbalances, resorting to affirmative action becomes a necessity.

Rather than defining affirmative action, Holloway (1989) points to the confusion in people's perception of it. Some people confuse the terms 'affirmative action' and 'equal opportunity.' Others think that it is unfeasible for an employer to practice affirmative action and equal opportunity simultaneously because affirmative action means discriminating against a class of people or not providing equal opportunity. Distinguishing between the two concepts, Holloway (1989) particularly, makes a very clear distinction. He argues that affirmative action goes beyond equal opportunity. When the numbers of qualified members of the targeted groups constitute only a small percentage of the pool, then providing equal opportunity will not sufficiently undo the effects of years of discrimination. If, for instance, there are a few qualified women, disabled people, or minorities then differentiating recruiting requirements may be in order.

One important difference between affirmative action and equal opportunity is in the former's differential recruitment of disadvantaged groups. A common misconception of the meaning of affirmative action is that a person employed as a result of affirmative action is an inferior student or employee. People with this view operate on the assumption that minority group members in their company are invariably less qualified. This is apparently not always the case. Holloway concludes that affirmative action is an obligation on employers to first discover the barriers to the employment of those not well represented in the workforce and then remove those barriers. Therefore, it is a guide for employers to use in appraising all their programmes and policies to ensure that their impact on targeted groups is understood.

From another perspective, Nel (2011) describes affirmative action policies merely as extension of equality. This is different from Holloway who made a distinction between it and equal opportunity. Chambers and Wedel (2005) state that affirmative action is the policy of favouring members of a disadvantaged group who currently suffer or historically have suffered from discrimination within a culture. Some scholars define the concept from binary perspectives of the protagonists and antagonists. Protagonists for instance, The American Association for Access, Equity, and Diversity (AAAED), define it, approvingly, as "Taking positive steps to end discrimination, to prevent its recurrence, and to create new opportunities that were previously denied to qualified women and people of color." Contrarily, antagonists define it, disapprovingly, as quotas and preferences for unqualified candidates to occupy certain positions of authority, in which case other qualified candidates may be described as unqualified because of affirmative action (Murray, 1984). It is even argued that affirmative action promotes discrimination which it sets out to fight. From the above definitions, affirmative actions are positive

actions but embroiled in serious controversies and are sandwiched between unending wrangling between antagonists and protagonists. They are, in principle, essentially designed to address past discriminations.

The constitutionality of affirmative action and the National Gender Policy

Affirmative action policies in support of women did not emerge accidentally from nowhere. There are some legal instruments invoked to make them acceptable and implementable. Though the Nigerian Constitution of 1999 (Federal Republic of Nigeria, 1999) does not provide for any precise affirmative action clause, the general provision of equality before the law has always been resorted to as justification. Section 16 (1) (b) of the Constitution states that: “The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution, control the national economy in such manner as to secure the maximum welfare, freedom, and happiness of every citizen on the basis of social justice and equality of status and opportunity.”

In Section 17(1) and (2) (a), it states: “The State social order is founded on ideals of Freedom, Equality and Justice.” In furtherance of the social order: “every citizen shall have equality of rights, obligations, and opportunities before the law.” There are many other human rights, legal, and international instruments which advocate for gender equality and prohibit discriminations of any kind against women like the Universal Declaration of Human Rights (UDHR) (UN, 1948), the International Covenant on Civil and Political Rights (ICCPR) (UN, 1966), the African Charter on Human and People’s Rights (ACHPR) (AU, 1981) and the International Consensus in the Beijing Platform for Action (BPFA) (UN, 1995), the Millennium Development Goals (MDGs) (UN, 2000), and the Women’s Rights Protocol (HRP) (AU, 2003).

The good side of these treaties that advance the cause of women is that Nigeria is a signatory to them. However, the downside is that these treaties are not binding even after being signatories to them. They are not binding because the Nigerian Constitution stands to obstruct Nigerian women to press further for implementation of sections of those regional and international human rights instruments endorsed by Nigeria, prohibiting gender discrimination. For instance, Article 12 of the Constitution clearly states that “no treaty between the (Nigerian) Federation and any other country shall have any force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.” In a nutshell, affirmative actions in Nigeria have been made a policy option to support women. The fact, however, is that none of these policies have had legal backing. They are

therefore not legally enforceable. The challenge, therefore, is that of legality, not dearth of policies.

It should be noted that there are policies in support of women's integration into national development via affirmative action. The first visible affirmative action in support of women was introduced in Nigeria in the year 2000. This was after the transfer of political power from the military to democratic regime. The Federal Government of Nigeria, which was then led by former President Olusegun Obasanjo, formulated a National Policy on Women (Sokefun, 2010). It was principally informed by the resolution of the 1995 Beijing Declaration and Platform for Action (UN, 1995). Thereafter, in 2006, the National Gender Policy (Federal Republic of Nigeria, 2006), still by Olusegun Obasanjo, was formulated to improve upon the previous one. The objective of the National Policy on Women was clearly stated:

To fulfil the yearnings as well as (promote) the efforts of Federal, State and Local Governments, Non-governmental Organisations, International Development Partners, the private sector, concerned corporate bodies and individuals to integrate women fully into national development, in order to remove those gender inequalities that have evolved through structures and processes created by patriarchy, colonialism and capitalism (Federal Republic of Nigeria, 2006:4).

It should be noted that the National Gender Policy is hinged upon some principles aimed at entrenching affirmative action by promoting gender equality as a globally accepted development factor with an inclination towards women's political empowerment for sustainable development (Omenka, 2017). Although the Beijing Declaration and Platform for Action, upon which the National Gender Policy was formulated, popularised the 35% affirmative action for women in elective and decision-making positions, women are largely under-represented at all levels of government in most countries - especially in the executive arm - despite the widespread advocacy for gender representation. Having established the constitutionality of gender affirmative action policy and situating it within some legal frameworks, the next theme focuses on challenges of women's cabinet membership in Nigeria.

Women's cabinet membership in Nigeria and the challenge of political participation

From the foregoing discussion, there are apparently no legal constraints against women's cabinet membership in Nigeria. There are, however, other challenges to women's ascendancy to the top level of decision-making circles across states of the federation. Some of these challenges are the patriarchal

system, low literacy rate, religion, money politics, violence, poverty rate, etc. All the aforementioned largely and negatively affect women's participation in politics (Luka, 2011; Awofeso & Odeyemi, 2014). Luka (2011) further argues that the literacy rate and poverty rate amongst Nigerian women are the most challenging obstacles to their participation in politics.

Salaudeen and Abdulmu'izz (2015) explain that women in Nigeria, as in the rest of sub-Saharan Africa, still face many challenges in this male-dominated sphere, such as discrimination (both in voting for candidates and allocating political offices), lack of adequate finance to effectively participate, and views that stigmatise female politicians as loose. Kelly (2019) identifies five main reasons for the lack of women's representation, which are: lack of effective government action; lower levels of female employment and education; sexist attitudes - sometimes but not always deriving from religion or traditional practices; a corrupt and patronage-based political system; and violence at elections - including against women candidates.

Para-Mallam (2006) merges all these challenges under three critical constraints which she classifies as institutional, ideological, and logistical. It is important to note that institutions are humanly developed structures of rules and norms that shape the attitudes of a class of people and constrain individual behaviour. They are building blocks of social order that represent socially (not necessarily legally) sanctioned expectations (Streeck & Thelen, 2005). In the words of Goetz (1997:5), they are "humanly devised constraints which reduce uncertainty and provide structure to everyday life, making certain forms of behavior predictable and routine, *institutionalizing* them." On the basis of institutional challenge, a male-dominated cabinet is predictable in any state in Nigeria because of the stereotypical expectation of women's social roles that are conventionally delineated.

Similarly, ideology poses a critical challenge to women's ascendancy in Nigerian politics. Through cultural and religious beliefs, females and femininity are looked down upon to the extent that their beingness - humanness - was, at some point in history, a subject of debate (Mackinnon, 2007; Salaudeen, 2021). People are indoctrinated to see 'manness' as virtue and 'womanness' as vile. Situating gender affirmative action within an ideological milieu that is essentially embedded in patriarchy poses a serious challenge to the presence of women as members of cabinet. In Nigeria, culture and religion, in the words of Para-Mallam (2006:262) "rationalize, justify, and sanctify the pre-eminence of maleness and male interests over femaleness and female interests." Thus, because of gender bias, roles are stereotypically assigned to women only within the households and men in the public life.

Logistics is the third constraint identified by Para-Mallam (2006). This borders on financing day-to-day political activities which are integral to political contest in a monetised democracy like Nigeria. While lack of funds is a major stumbling block to women's ability to compete for elective positions, it should not be a serious challenge to becoming members of cabinet which is not elective but appointive. However, because of the nature of Nigerian politics in which elective officeholders use political appointments to reward their support group, women are financially disadvantaged to bankroll candidates for elective positions or constitute a formidable support group. This, in turn, stands in their way of being rewarded with political appointments like cabinet membership.

Having highlighted some major challenges faced by women in the sphere of politics which border on patriarchy, religion, and culture, it is important to draw attention to another challenge (probably one of the most problematic), which many gender advocates and researchers do ignore in gender discourse. This is the challenge of 'women versus women' or 'women against women.' Studies have shown that women are their own worst enemies. Highlighting woman's inhumanity to woman, Valen (2010:11), a woman herself, laments: "We limit and stifle the very connections that could nourish us by turning away, perpetuating insults upon one another, and stirring up self-sabotaging currents that beat us back."

In an interview conducted by *Daily Post* after the 2023 General Election, an interviewee - a female aspirant - gives a grotesque account of women's travails in Nigerian politics which includes the challenge of woman against woman. She recounts:

No one listened to me, neither did anyone wanted to know what my manifesto entailed without me first of all presenting drinks and cash, even my fellow women. I had to buy bags of rice, wrappers etc. to consult them... she did not win the elections because she was told by the men in her community that she has married outside the area and should go to her husband's local government to vie for political office and not her father's house (Daily Post, 2023, para. 6-8).

Could there be any disturbing example of challenges faced by women in politics like that of Sarah Jibril? According to Salaudeen (2019:117), "Sarah Jibril could be called the women 'political trailblazer' who had been contesting for Nigeria's president since 1992. Securing only one vote in the 2011 PDP primaries could have perhaps dashed her hope of any glimmery political future." Hence, she did not contest thereafter.

Prior to the 2023 gubernatorial election, Paul (2022) reports how the former First Lady, Aisha Buhari, attempted to scuttle the ambitions of Aisha Binani, a woman like her, in her bid to contest for the governorship of Adamawa State. Though Binani later won the APC primary election, she (Aisha Buhari) reportedly directed all the stakeholders to vote for Nuhu Ribadu – supporting a male against a female candidate. Her major contention was that Nigeria is not ripe for a female gubernatorial candidate, much less a female governor. This is a classic case of woman against woman. Valen (2010:xv) mused this reality rather poetically:

I want to trust women but can't—been burned too many times.

I'm always cautious. Except for my closest friends, I keep women at arm's length.

Wake up, women! The enemy is within. We can't keep blaming men.

Percentage of female cabinet membership in Nigeria from 2019 to 2023

Nigeria's unbroken democracy beginning from 1999 has witnessed 24 years of existence. After its experimentation for these years, it has not overcome many of its challenges, one of which is fair gender representation. Despite almost two decades of formulating the 2006 National Gender Policy, which stipulates 35% for women's representation in all political appointments, women still feel marginalised. They are marginalised. While the marginalisation is multi-faceted, this chapter focuses on how women were marginalised – despite the 35% affirmative action – as cabinet membership in the fifth regime (2019–2023) of unbroken democracy. Table 25 shows the number and percentage of female commissioners across the 36 states of the Federation.

Table 25: Number of commissioners across thirty-six states in Nigeria (2019–2023)

S/N	State	Total	Female Commissioners	Percentage	Year of Appointment
	Abia	23	2	9.5	2019
	Adamawa	23	4	17.4	2019
	Akwa Ibom	21	1	4.8	2019
	Anambra	20	5	25	2022
	Bauchi	21	4	19	2021
	Bayelsa	24	2	8.3	2021

Women Representation in Governance in Nigeria

S/N	State	Total	Female Commissioners	Percentage	Year of Appointment
	Benue	15	3	20	2019
	Borno	22	2	9.1	2019
	Cross River	39	7	17.9	2019
	Delta	25	2	8	2019
	Ebonyi	27	4	14.8	2019
	Edo	11	5	45.5	2021
	Ekiti	14	2	14.3	2019
	Enugu	19	3	15.8	2019
	Gombe	21	3	14.3	2019
	Imo	22	5	22.7	2019
	Jigawa	11	1	9.1	2019
	Kaduna	14	6	42.9	2019
	Kano	20	2	10	2019
	Katsina	18	1	5.6	2019
	Kebbi	16	2	12.5	2020
	Kogi	17	1	5.9	2019
	Kwara	16	9	56.3	2019
	Lagos	22	8	36.4	2019
	Nasarawa	15	2	13.3	2019
	Niger	20	4	20	2019
	Ogun	19	4	21.1	2019
	Ondo	14	4	28.6	2021
	Osun	23	4	17.4	2019
	Oyo	14	1	7.1	2019
	Plateau	23	4	17.4	2019
	Rivers	13	2	15.4	2019
	Sokoto	25	2	8	2019
	Taraba	25	2	8	2019
	Yobe	20	2	10	2019
	Zamfara	19	1	5.3	2019

Source: Compiled by authors

From Table 25, it is very obvious that women were acutely under-represented as cabinet members in most states of the Federation. States like Akwa-Ibom, Jigawa, Katsina, Kogi, Oyo, and Zamfara had only one female commissioner. This implies that six out of the thirty-six states (17%) had only one female as commissioner for Ministry of Women Affairs, which has always been led by females. This is not to say that men have never been appointed to officially look after women. We have had such in Bauchi State under former Governor Yuguda in 2007 when he appointed Alhaji Idris Halilu in that capacity. Also, Governor Jibrilla Bindow in 2015 appointed male commissioner, Aliyu Tola, to man the Ministry of Women Affairs (Fulani, 2015). While this sounds illogical, nauseating, and insulting to the sensibility of many gender advocates, it is argued that it is not against any of the provisions of the 1999 Constitution. "There is no law", argued the then Special Assistant on Media to Governor Yuguda, "which makes it compulsory that only woman should be a Commissioner for Women Affairs" (Gusau, 2007). Though, in the period under study, all ministries of women affairs in the thirty-six states were headed by women.

It should also be noted, as Table 25 reveals, that women's abysmal representation in cabinet is not confined to any region, religion, or ethnicity. Both North and South - despite their ethnic and religious differences - have states with only one female commissioner. It is argued that political pressure from stakeholders explains why women are hardly appointed. For instance, in his first appointment of commissioners in Delta State in 2019, Governor Okowa expressed regret for appointing only one woman into his cabinet. In his words: "I want to apologise to women, it is not easy to balance out the various pressure from our local government areas but I want to assure women that in other areas of appointments, I will bring my discretion in fullest that women will be adequately represented." (*Premium Times*, 2019). Though Governor Okowa later appointed more women as commissioners, the figures and percentages in the table only capture the first full appointments. It does not take subsequent 'add and drop' or reshuffling of cabinet into account.

That said, four states stood out to appoint an appreciable number of female commissioners to even exceed the 35% affirmative action as stipulated in the National Gender Policy: two states in the North and two in the South. These states are, in ascending order, Lagos (36.4%), Kaduna (42.9%), Edo (45.5%), and Kwara (56.3%). In fact, Governor AbdulRahman AbdulRazaq of Kwara state unprecedentedly appointed more female commissioners than male. This is unprecedented not only in the State but in Nigerian History. While these four states acted commendably in gender balancing, they constitute only 11% of the thirty-six states. The percentage is still very poor. Two out of nineteen states (10.5%) in the North achieved 35%

affirmative action. Similarly, two out of sixteen states (12.5%) in the South achieved it.

At the national level under President Muhammadu Buhari, only seven out of forty-three ministers were females. This is approximately 16%, which falls way below the stipulated 35%. It is a repeat of his 2015 ministerial list which had six out of thirty-six - approximately 16%. This trend of normalising the shortfall of women in cabinet despite the 35% affirmative action in their favour is a serious challenge to gender mainstreaming. Reading with the lens of Feminist Legal Theory which presupposes women's input in lawmaking and political liberalism which emphasises accommodating everyone, it reeks of gender insensitiveness that some states could only have one female in their cabinet - ostensibly to head Ministry of Women Affairs.

Analysis and discussion

This chapter discusses affirmative action and highlights some of the contentious issues that accompany its implementation. Whether one agrees with it or not, the reality is that it is a universal and age-long concept which aims at addressing age-long discrimination by discriminating against discrimination through discrimination. One of the major arguments against it is that it rewards mediocrity and thus discriminates against merit. Would women's inclusiveness in cabinets lead to mainstreaming unqualified women and discrimination against men, as opponents argue? This is a binary question that requires two answers.

To answer the first part of the question, affirmative action vis-à-vis women's representation in cabinet would not, in itself, lead to mainstreaming unqualified women. Nigeria has a pool of meritorious women who are well qualified for public roles to draw from. On the question of discrimination, it must be acknowledged that there is a symbiotic relationship between affirmative action and discrimination. Yet advocates, acknowledging that it is discriminatory, term it 'positive discrimination' as it addresses negative discrimination. That is why affirmative action must have a time frame to be justifiable. It must be timetabled and periodised as a temporary remedial measure. The recent Supreme Court judgement in the United States, overturning the decades of precedents supporting affirmative action in college admission for the disadvantaged ethnic minority groups, is a classic example of the temporariness of affirmative action (Mangan, 2023).

Religion is said to be a factor that debars women from making it to the cabinet and other high-ranking positions in government. This is not always the case, as Table 25 reveals. Two Northern states (Kwara and Kaduna) were able to achieve 35% affirmative action and even beyond, despite religion.

Kaduna State is a sharia state in the north while Kwara, though not officially a sharia state, has a strong attachment to Islam. Governor Ifeanyi Okowa, who appointed two women into his cabinet in his earlier appointments in 2019 in Delta State, did not mention religion as a factor that influenced his decision. He promised to include women in his subsequent appointments and revealed that pressure from local governments was the reason for the gender imbalance. This was a promise later fulfilled as he subsequently appointed more women into his cabinet. In 2021, Governor Okowa swore in 18 commissioners out of which 5 were women. Then, in response to criticism against poor representation of women, he said “the resolve for more female visibility (and participation) in politics and governance was a deliberate at enhancing women’s participation in decision-making process in government” (Onabu, 2021:para. 2). Similarly, when Bauchi State under Governor Isa Yuguda insisted on a male commissioner for women affairs, the government did not reference religion as *raison d’être* for its position. It rather argued from the position of the law that there is no law which makes it compulsory that only women should be Commissioner for Women Affairs.

Violence is another factor often cited for women’s poor representation in governance. While it is true that violence actually steers women away from politics (especially the core power struggle), it has nothing to do with their representation in cabinet. Cabinet membership is not an elective position that requires fierce contest. Members are appointed, not elected. What about sexist attitudes, which, according to Kelly (2019), sometimes, but not always, derive from religion or traditional practices? The issue of religion has been addressed above. What remains is sexist attitudes. This is a serious factor that cannot be ignored, and it boils down to patriarchy. Nigeria is essentially a patriarchal society. Literarily, patriarchy means “the rule of the father” which consequently means a society dominated by men who rule over women. Explaining patriarchy as a factor inhibiting women from politics, Chinwe (2021) asserts that men have enjoyed a historical dominance over women in politics; they often stereotype women as subordinate and justify their subordination. Women are culturally required to seek husbands’ or fathers’ permission to participate in politics. Not only that, women in politics are generally stereotyped as promiscuous, irresponsible and of low virtue. Thus, patriarchy - firmly rooted in Nigerian cultures - leaves women with little chance of becoming involved in politics. Nigerian politics is mannish - culturally considered unwomanly. It characteristically involves “thuggery, night meetings at private homes, blackmailing and rigging” (Ikpeze, 2011:171).

When women, against all odds, eventually participate in politics, they are most relevant on the fringe of the political arena as mobilisers, dancers,

and voters. Political campaigns are often populated by women of different categories and age brackets where they sing and dance to boost the ego of male political office-seekers. Their visibility becomes very important and adds colour to campaign activities. But ironically, their usefulness ends as soon as elections are won. They are thus called 'occasion women' who hardly make it to the decision-making circle - much less cabinet membership. Even when women eventually make it to what looks like the political top, they are, to borrow from Nkereuwem (2023:7), "are often delegated to decorative offices" - that is, in a deputising capacity. To address these challenges, women's affirmative action policy becomes very handy. Therefore, the National Gender Policy, which positively recommends 35% for women in all appointments is a laudable intervention.

That said, the National Gender Policy is said to be a proverbial toothless bulldog with moral but no legal authority. Policy provisions as guidelines for government action are not judicable and women cannot hold government accountable in a court of law for non-implementation. Policies are statements of intention regarding government's responsibility towards citizens. While they can be used as a yardstick to measure performance, they possess no inherent powers to ensure compliance with policy provisions. But this is not about the gender policy, it is about patriarchy. Though the Constitution of Nigeria (1999) (Federal Republic of Nigeria, 1999) is recognised as binding on all Nigerians, "its practical enforcement in changing some social issues seems to make it a toothless bulldog in the face of the overwhelming patriarchal structures with regard to women in Nigeria. It is important to note that laws in themselves are not sufficient to change the mindset of the people. Enforcement of such laws is important" (Abinbola et al., 2023:9).

However, the Abuja Division of the Federal High Court on the matter filed by the Women in Politics Forum (WIPF) against the federal government, has ruled in favour of the 35% affirmative action in appointments of women into public office. According to the judgement, "Formulating policies based on sex, stereotyping, feudal and patriarchal traditions will no longer be tolerated because of the supremacy of constitutional values." The court said that the government had an obligation to implement the 35% affirmative action, accusing previous administrations of breaching international treaties on women's participation in government. This judgement would have been a great victory in the struggle for women's inclusiveness by making the implementation of the 35% affirmative action of the National Gender Policy legally binding, but it is not coming from the Supreme Court. The judgement is thus appealable. And as expected, the Nigerian Government appealed the judgement compelling it to reserve 35% of public offices for women (Ejekwonyilo, 2022). The case will likely be pushed to the apex court.

Would it favour the Women in Politics Forum in the end? Only time will tell. The National Gender Policy (Federal Ministry of Women Affairs and Social Development, 2013) and the ensuing legal tussle it sparks is an ironic case of government against itself: its brainchild.

Summary, conclusion and recommendations

This chapter discussed and justified gender affirmative action within the context of Nigerian milieu where discrimination against women has been institutionalised. The point is, should justice prevail, there must be restitution for victims of discrimination. Ethically and from the perspective of Political Liberalism, gender affirmative action is to make women who were / are victims of discrimination to be beneficiaries of discrimination. This is the core logic of affirmative action - that is, accommodating everyone.

Though affirmative action addresses marginalised groups generally, this chapter focused on how Nigerian women are marginalised vis-à-vis participation in politics at the level of cabinet membership. It thus explains why it has always been Herculean for women to make it to the cabinet - both at state and national levels. It highlights some of the hurdles that women have to overcome to be mainstreamed into the decision-making circle in government. It argued that women's participation in politics has not been meaningful; rather, it has been occasional, which narrows their participation to the fringe, while this boils down to some challenges like poverty, poor literacy rate, violence in the political arena, religion, stereotyped gender role, women's inhumanity to women, and so on.

It is argued that the 35% affirmative action for women in Nigeria has not been achieved for over 17 years of the formulation of the National Gender Policy because of the socio-economic variables (mentioned above) that adversely affect its implementation. It is however observed that in some African countries where similar socio-economic variables (like patriarchy, poor literacy rate, poverty, and violence) exist, gender policies are being implemented with incredible success. Countries like Algeria, Benin, Cameroon, Comoros, Congo, Djibouti, DRC, Kenya, Morocco, Niger, Rwanda, Senegal, and Togo (all in Africa) are amongst those that have passed legislation and adopted national policies mandating gender parity in executive, legislative, and judicial branches. Quotas are often legislated to increase female representation in public offices. Burundi, Congo, Djibouti, Eswatini, Morocco, and Niger have ratified laws establishing minimum requirements for women's representation in cabinet, legislative bodies and/or the judiciary (AU, 2022).

Addressing this challenge from the constitutional angle is the way to go. Therefore, this chapter finds that the most problematic of all the obstacles on the trajectory of women's actualisation of their political dream are patriarchy and constitutional barriers. It is not that the 1999 Nigerian Constitution is apparently against women's participation in politics, but because of patriarchal influence, its provisions are too general to address these specific gendered socio-political challenges. The 35% affirmative action policy for Nigerian women will only be realised if the government makes laws that will compel political parties to comply with the policy requirements. From the perspective of Feminist Legal Theory, it becomes a necessity that women should either have a say in lawmaking or male lawmakers must prioritise the concerns of women. Though some state governors are gender-friendly, as shown in Table 25, they may choose to be gender-adversarial. This chapter concludes that until affirmative action is domesticated, its implementation will be at the mercy of the disposition of the government in power towards gender issues.

Women's participation in politics should go beyond 'occasional membership.' They have to be registered members. It is true that women have ascended to the zenith of some professional careers in Nigeria. We have had women directors, permanent secretaries, vice chancellors, provosts and so on, yet their visibility in politics still leaves much to be desired. This, in part, could be because very few of them are registered members of political parties. Going by the Constitution, one is not qualified to be appointed into cabinet without being a politician - a registered member of political part(ies).

For instance, Section 147 (5) says: "No person shall be appointed as a Minister of the Government of the Federation unless he is qualified for election as a member of the House of Representatives." Similarly, Section 192 (4) reads: "No person shall be appointed as a Commissioner of the Government of a State unless he is qualified for election as a member of the House of Assembly of the State." This implies that for any woman to be appointed into state or federal cabinet, she must be qualified to contest for election, and to be qualified she must be a registered member of a political party.

The Nigerian Government has successfully sloganised its support of women in terms of policy; what it has failed to do is to institutionalise that support through the implementation of the 35% affirmative action - a prescription of a policy that it willingly drafted. The Federal Government denies women the rights it ostentatiously grants them. A quote from Aina-Pelemo's work (2023:110) best describes government's action, "any human being (male or female) whose rights are denied by will, at the very least, have their humanity destroyed, and at the worst, their humanhood distorted."

For the government to fulfil its 35% gender policy promise, there is a need for constitutional reforms that will positively address the women in politics question. This will facilitate the implementation of gender policies as evident in other African countries.

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