

THE NATIONAL GENDER POLICY'S AFFIRMATIVE ACTION: AN ASSESSMENT OF THE CHALLENGES TO WOMEN REPRESENTATION IN CABINET POSITIONS IN NIGERIA

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Abstract

Affirmative action for women is an outcome of global advocacy for gender mainstreaming in politics and decision-making processes. Through the instrumentality of some gender-friendly treaties, to which many countries—including Nigeria—are signatories, countries are encouraged to allot women a certain percentage in political appointments. Thus, women's visibility in modern state politics is increasingly becoming a yardstick to measure levels of democratization 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) in 2006. This Policy advocated for 35% affirmative action to women in all political appointment positions in consonance with global efforts to address women's marginalization and discrimination, as captured in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1995 Beijing Declaration. However, women are still being marginalized in Nigerian politics due to the age-long patriarchal notion that women are not meant for public affairs, thereby making the domestication of gendered affirmative action policy in a patriarchal society like Nigeria problematic. Methodically, this study is both qualitative (using discourse analysis) and quantitative (analyzing numerical data on women in cabinet positions across the federating units). From the perspectives of political liberalism and feminist legal theory, this study critiques the concept of affirmative action vis-a-vis women's representation in cabinet positions in Nigeria. The study findings reveal that the Constitutional barrier has been the major stumbling block to the implementation of Nigeria's Affirmative Action since 2006. The study concludes that unless Affirmative Action is enshrined in the Constitution, its implementation will be at the mercy of the disposition of the government in power. Thus, this study recommends Constitutional reforms to accommodate crucial gender decisions made by the government such as Affirmative Action to facilitate its implementation.

Keywords: Affirmative Action, Women, Representation, Cabinet Offices/Positions, Nigeria, Politics.

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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 inequality. Reforms that revolve around gender questions 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 democratization in democratizing states and a measure of the sustainability of democracy in the considerably democratized ones (UNWOMEN, 2024). Yet, women are still being marginalized in politics. Discrimination against women, as a result of marginalization, is premised on the age-long patriarchal notion that they are caregivers, home maintainers, and child-breeders who have no business in public affairs. In some socio-cultural settings, women are not supposed to be educated in the first place, which eventually means that the need for their participation in public affairs does not arise.

However, changes in thoughts and actions are being seen globally. These changes have, in one way or the other, affected the way women think of themselves and how “men” view women. For instance, women's access to education has drastically improved worldwide. Therefore, educated women are today challenging 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 other spheres. It is this liberation, couched in gender terms, that would eventually give rise to the notion of gender equality. While affirmative action is a brainchild of advocacy to support gender equality, its implementation in a patriarchal society like

Nigeria is problematic due to several factors such as cultural, religious, and misogynistic factors, among others. Nigeria signed many international treaties which highlight the need for gender equality. The most prominent of these treaties is the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) which provides that states (countries) should adopt some temporary special measures aimed at accelerating equality between men and women. These measures, according to CEDAW, shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Consequently, Nigeria stipulates 35 percent Affirmative Action in support of women's participation in politics in the National Gender Policy adopted in 2006, although that policy has not been implemented despite the Court ruling which ordered implementation in 2022. Affirmative action, as formulated, stipulates women's inclusiveness in all appointments, however, this study focuses on female cabinet membership across the thirty-six (36) states in Nigeria from 2019 to 2023. With the support of statistics, this study assesses the challenges impeding the implementation of the country's Affirmative Action, and proffer recommendations on how to address the issue.

Methodology

This study is both qualitative and quantitative. On the qualitative approach, discourse analysis is employed to explain why the implementation of 35% women affirmative action continues to be challenging despite the policy instrument in place to support it. For the quantitative approach, the study utilizes complete enumeration known as census or universal sampling—which includes all Ministers and Commissioners appointed within the period of study—while descriptive

statistics is employed to make gender taxonomy of the appointees. Using secondary sources of data collection, it surveys the number of women appointed (appointment only) into various Cabinet positions by State Governors within the timeframe of the study (2019-2023). Cabinet members surveyed are limited to only Ministers and Commissioners at the Federal and State levels. It makes use of percentages and tabular presentation to analyze its data.

Theoretical Framework

This study analyses affirmative action vis-a-vis women's appointment into ministerial offices in Nigeria from the perspectives of political liberalism and feminist legal theory. Though each of these theories is, on its own, relevant and can independently make a case for positive action in support of women, utilizing them together is considered more apt. While political liberalism views affirmative action from a philosophical/ethical perspective (Mannheim, 1991; Rawls, 1993), feminist legal theory, also known as feminist jurisprudence, addresses it from a legal angle (Rich, 1979; Cornell, 1991; Mackinnon, 2005).

Political liberalism is a liberal political concept of justice founded on the thoughts of John Rawls. Rawls (1993) coined the concept to address the problem of political instability in modern constitutional democracies. Political liberalism recognizes that contemporary democratic states consist of religious, cultural, and ethnic pluralism which are in sharp contrast to one another. Political liberalism therefore attempts to accommodate these diversities to bring about the common good to be enjoyed in a political community (Rawls, 1993).

The terms “political liberalism” and “democracy” are essentially equivalent and entwined; so, almost interchangeable. Vanberg (2008)

argues that the two terms are not only compatible ideals but rather complementary ideals. Mannheim (1991) exemplifies political liberalism as a “liberal-democratic” ideology. Political liberalism, according to Rawls (1993), is a liberal-democratic ideology and institutional system of liberal-secular democracy. Political liberalism primarily accommodates everyone, including minorities, outcasts (e.g. ex-prisoners), marginalized groups (e.g. women), and foreigners. Political liberalism fosters the system of universal political liberty, equality, and justice for all where “everyone is entitled to an equal system of basic liberties, [that is] the right to *equal* subjective liberties” (Habermas, 2001, p. 71).

Feminist legal theory, on the other hand, 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). 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 (Mackinnon, 2005). This, feminists argue, poses a danger to womenfolk and leads to the suppression of women (Matsuda, 1997).

Feminists see the oppression of women as the most fundamental and universal form of domination and it aims to put an end to it. Until women have a say in lawmaking, they argue, they will continue to be consigned to the margin of society, and women will neither make any input nor will they benefit from any output in the form of policy favorable to them (women). To correct this anomaly, feminists aver that reforming the basis of law-making to enable significant inputs from women is a sine qua non (Matsuda, 1997), and gender mainstreaming is key. Gender mainstreaming in law-making ensures that women have, what a feminist theorist Rich (1979, p. 271) called

the power-to-create, power to think, power to articulate, concretize their visions, and transform their lives and those of their children. Literature reveals that the major stumbling block to implementing affirmative action in favor of women's representation and/or appointment in Nigeria is legislative.

Being a patriarchal society, feminists in Nigeria will have to walk a tightrope between making demands for reforms of laws that affect women on the one hand and being forced to work within the conservative and patriarchal structures—which they seek to dismantle gender norms—on the other hand. Feminists also have an identitarian challenge to battle with, especially when the whole project of feminism is considered nonsensical in some conservative circles (Mandle, 2015). Despite these challenges, affirmative action and the challenge of women's representation in Nigeria's ministerial offices could best be addressed through gender mainstreaming in law making which feminist legal theory advocates.

Affirmative Action: Origin and Conceptual Clarification

Affirmative action could be traced to the “40 acres and a mule policy” of General William Sherman who suggested a division of the land and goods from Georgia and grant it to families of the deprived (Anderson, 2013). Though the proposal was met with opposition, policies to assist the less privileged later resurfaced during the civil rights movement through some court decisions which later metamorphosed into affirmative action (William & Modigliani). As the civil rights movement continued, President John Fitzgerald Kennedy was the first President of the United States to use the phrase “affirmative action” when he issued Executive Order 10925 (Erin, 1998). However, Executive Order 11246, issued by President Lyndon Baines Johnson in 1965, marked the real beginning of affirmative action as a

national imperative (Paul, 2011). The phrase has now become a universal concept.

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 exists since the late 1900s (Lederer, 2013). As the name implies, it is the practice of “acting affirmatively.” According to (Kranz, 2002, p. 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, are what affirmative action entails.

In his way, Newman (1989, p. 32) defines affirmative action as any race—or sex—conscious employment practices devised with the intention of redressing past racial or gender imbalances and injustices. Affirmative action programs may include preferential treatment to members of a targeted class of people (Newman, 1989). Lee (1999, p. 394) defines affirmative action 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 “level the playing field” for whole

categories of citizens, and the emphasis is on “disadvantaged groups” rather than “injured individuals” (Lee, 1999, p. 394).

Though Lee (1999) did not mention women as victims, but was general in the definition. He made an important point in his explanation that discrimination needs not to be present but the reverberating effects of past discrimination can create some forms of imbalance in the present. Thus, to address these imbalances, resorting to affirmative action becomes a necessity. Holloway (1989) points to the confusion in people's perception of affirmative action. While some people confuse the terms “affirmative action” with “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 (Eastland, 1996).

Distinguishing between the two concepts, Holloway (1989) particularly makes a very clear distinction. He argues that affirmative action goes beyond equal opportunity (Holloway, 1989). 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 (Holloway, 1989). One important difference between affirmative action and equal opportunity is in the former's differential recruitment of disadvantaged groups (Holloway, 1989). 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 (1989) 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 programs and policies to ensure that their impact on targeted groups is understood.

From another perspective, Nel (2011) describes affirmative action policies merely as an extension of equality. This is different from Holloway who made a distinction between it and equal opportunity. Chamber and Wedel (2005) state that affirmative action is the policy of favoring members of a disadvantaged group who currently suffer or historically have suffered from discrimination within a culture. Some scholars define the concept of affirmative action from the binary perspectives of the protagonists and antagonists. From the protagonist's perspective, the American Association for Access, Equity, and Diversity (AAAED), defined affirmative action, 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” (AAAED, n.d.).

Contrarily, from the antagonist perspective, affirmative action is defined, 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 due to affirmative action (Murray, 1984). It is even argued that affirmative action promotes discrimination which it sets out to fight (Cohen, 1995). Overall, affirmative actions are positive actions but embroiled in serious controversies and sandwiched between unending wrangling between antagonists and protagonists. They are, in principle, essentially designed to address past discrimination.

The Constitutionality/Legitimacy of Nigeria's 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 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), the Constitution states that “The State social order is founded on ideals of Freedom, Equality, and Justice,” and 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 that advocate for gender equality and prohibit discrimination of any kind against women like the Universal Declaration of Human Rights (UDHR, 1948), the International Convention on Civil and Political Rights (ICCPR, 1966), the African Charter on Human and People's Rights (ACHPR, 1981), International Consensus in the Beijing Platform for Action (BPFA, 1995), Millennium Development Goal (MDGs) 2000, and the Women Right Protocol (HRP, 2003).

The good side of these instruments that advance the cause of women is that Nigeria is a signatory to all of them. However, the downside is that these instruments are not binding because the Nigerian Constitution

emphasizes domestication, without which implementation of regional and international human rights instruments endorsed by Nigeria is impossible. 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.” While affirmative action in Nigeria, for instance, has been made a policy option through the adoption of the National Gender Policy to support women, the policy has no legal backing.

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 the democratic regime. The Federal Government of Nigeria, which was then led by former President Olusegun Obasanjo, formulated a National Policy on Women. It was principally informed by the resolution of the 1995 Beijing Declaration and Platform for Action. The objective of the National Policy on Women was clearly stated:

To fulfill 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 (National Gender Policy, 2006, p. 4).

Thereafter, in 2006, the National Gender Policy, still under President Olusegun Obasanjo, was formulated to improve upon the National Policy on Women. 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, popularized 30% 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/legitimacy of Nigeria's gender affirmative action policy and situated it within some legal frameworks, the next section focuses on challenges to women's representation in Cabinet positions in Nigeria.

Women Representation in Cabinet Positions in Nigeria and the Challenges of Political Participation

There are apparently no legal constraints against women's representation or appointment into cabinet offices in Nigeria. However, there are challenges to women's ascendancy to the top-level decision-making circles across states of the federation. Some of these challenges are the patriarchal-dominated political system, low female literacy rate, religion, money politics, violence, and poverty rate, among others. All the aforementioned largely and negatively affect women's participation in politics (Luka, 2011; Awofeso & Odeyemi, 2014). Luka (2011) further argued that the literacy rate and poverty rate among 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 (patriarchal) sphere. These include discrimination both in voting for

candidates and appointment into political offices, lack of adequate finance to effectively participate, and views that stigmatize female politicians. 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 were classified 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 behavior. Institutions are building blocks of social order that represent socially (not necessarily legally) sanctioned expectations (Streeck, & Thelen 2005). In the words of Goetz (1997, p. 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.” Based on the institutional challenge, a male-dominated cabinet is evident in different federating units in Nigeria due to 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 the cabinet. In Nigeria, culture and religion, in the words of Para-Mallam (2006, p. 262) “rationalize, justify, and sanctify the pre-eminence of maleness and male interests over femaleness and female interests.” Thus, due to gender bias, roles are stereotypically assigned to women only within the households and men in public life.

Financial logistics is the third constraint identified by Para-Mallam (2006). This borders on financing day-to-day political activities which are integral to political contests in a highly monetized electoral 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 become members of cabinets which is not elective but appointive. However, because of the nature of Nigerian politics in which elective office-holders use political appointments to reward their support group, women are financially disadvantaged to bankroll candidates for elective positions to constitute a formidable support group. This in turn stands in their way of being rewarded with political appointments into cabinet offices.

Another challenge, (probably one of the most problematic) that many gender advocates and researchers do ignore in gender discourse is the “women versus women” or “women against women” problem. Studies have argued that women are their own worst enemies. Highlighting women's inhumanity to women, Valen (2010, p. 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 women against women. She recounts:

No one listened to me, and neither did anyone want 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 had 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, p. 73), "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 has not contested since 2011, after her bitter ordeal. Prior to the 2023 gubernatorial election, Nigerian Tribune (2022) reports how the former First Lady Aisha Buhari, attempted to scuttle the ambition of Aisha Binani, a woman like her, in her bid to contest for the governorship position in Adamawa State. Though Binani later won the APC primary election, Aisha Buhari was said to have 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, p. 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. Yet, it has not been able to overcome many of its challenges stifling true democratic consolidation, which is the lack of women representation/gender balance in politics. Despite almost two decades of formulating the 2006 National Gender Policy which stipulates 35% for women representation in all political appointments, women remain marginalized in politics. While the marginalization is multi-faceted, this paper focuses on how women are marginalized in appointment in cabinet offices especially in the 2019 and 2023 appointments, despite the 35% affirmative action. Table 1 below shows the number and percentage of Female Commissioners across the 36 states of the Federation.

Table 1: Number of Commissioners in the 36 States in Nigeria (2019-2023).

S/N	State	Total	Commissioners				Year of Appointment
			Male	%	Female	%	
1.	Abia	23	21	90.5	2	9.5	2019
2.	Adamawa	23	19	82.6	4	17.4	2019
3.	Akwa Ibom	21	20	95.2	1	4.8	2019
4.	Anambra	20	15	75	5	25	2022
5.	Bauchi	21	17	81	4	19	2021
6.	Bayelsa	24	22	91.7	2	8.3	2021
7.	Benue	15	12	80	3	20	2019
8.	Borno	22	20	90.9	2	9.1	2019
9.	Cross River	39	32	82.1	7	17.9	2019
10	Delta	25	23	92	2	8	2019
11	Ebonyi	27	23	85.2	4	14.8	2019
12	Edo	11	6	54.5	5	45.5	2021
13	Ekiti	14	12	85.7	2	14.3	2019
14	Enugu	19	16	84.2	3	15.8	2019
15	Gombe	21	18	85.7	3	14.3	2019
16	Imo	22	17	77.3	5	22.7	2019
17	Jigawa	11	10	90.9	1	9.1	2019
18	Kaduna	14	8	57.1	6	42.9	2019
19	Kano	20	18	90	2	10	2019

20	Katsina	18	17	94.4	1	5.6	2019
21	Kebbi	16	14	87.5	2	12.5	2020
22	Kogi	17	16	94.1	1	5.9	2019
23	Kwara	16	7	43.7	9	56.3	2019
24	Lagos	22	14	63.6	8	36.4	2019
25	Nasarawa	15	13	86.7	2	13.3	2019
26	Niger	20	16	80	4	20	2019
27	Ogun	19	15	78.9	4	21.1	2019
28	Ondo	14	10	71.4	4	28.6	2021
29	Osun	23	19	82.6	4	17.4	2019
30	Oyo	14	13	92.9	1	7.1	2019
31	Plateau	23	19	82.6	4	17.4	2019
32	Rivers	13	11	84.6	2	15.4	2019
33	Sokoto	25	23	92	2	8	2019
34	Taraba	25	23	92	2	8	2019
35	Yobe	20	18	90	2	10	2019
36	Zamfara	19	18	94.7	1	5.3	2019

Source: compiled by the authors

From Table 1 above, it is very obvious that women were acutely underrepresented 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 of the federation, that is 17%, had only one Female as Commissioner, which is in the Ministry of Women Affairs, and that has often been the norm. This is not to say men have never been appointed to officially look after women. In Bauchi State under former Governor Yuguda in 2007 Alhaji Idris Halilu, a man, was appointed in the capacity of Commissioner for Women Affairs. Also, Governor Jibrilla Bindow in 2015 appointed male Commissioner, Aliyu Tola, to oversee the Ministry of Women Affairs (Fulani, 2015). While this sounds illogical, nauseating, and insulting to the sensibility of many gender advocates, the argument was that it is not against any of the provisions of the country's 1999 Constitution. "There is no law", as was argued by the then Special Assistant on Media to Governor Yuguda, "which makes it compulsory that only a woman should be Commissioner for Women Affairs" (Gusau, 2007). Though, in the period under study, all ministries of women's affairs in the thirty-six states were headed by women.

It should also be noted as Table 1 reveals that women's abysmal representation in cabinet positions 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. Political pressure from stakeholders is one explanation for 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 pressures from our local government areas but I want to assure women that in other areas of appointments, I will bring my discretion to the fullest so that women will be adequately represented." (Premium Times, 2019, para. 13).

Though Governor Okowa later appointed more women as Commissioners, the figures and percentage in Table 1 above only capture the first full appointments after the ascension into office. It does not take subsequent “add and drop” or reshuffling of the cabinet into account.

However, four states stood out in women's appointment of Female Commissioners to the extent that they exceeded the 35% affirmative action as stipulated in the National Gender Policy. Two states in the North and two in the South. These states based on the highest ranked are Kwara (56.3%), Edo (45.5%), Kaduna (42.9%), and Lagos (36.4%). In fact, Governor AbdulRahman AbdulRazaq of Kwara State appointed more Female Commissioners than male. This was unprecedented not only in Kwara State but in the Nigerian history. While these four states acted commendably in gender balancing, they constitute only 11 percent of the thirty-six (36) states. The percentage is still very poor. Only two out of nineteen states (10.5%) in the North achieved 35% affirmative action. Similarly, only two out of sixteen states (12.5%) in the South achieved it.

At the national level under President Muhammadu Buhari, only seven (7) out of forty-three (43) Ministers were female. This is approximately 16 percent which falls way below the stipulated 35 percent. It is a repeat of his 2015 ministerial list which had six (6) out of thirty-six (36) approximately 16 percent. This trend of normalizing the shortfall of women in the cabinet despite 35 percent affirmative action in their favour is a serious challenge to gender mainstreaming. Using the lens of feminist legal theory which presupposes women's input in law-making and political liberalism which emphasizes accommodating everyone, it reeks of gender insensitiveness that some states could only have one female in their cabinet—ostensibly to head the Ministry of Women Affairs.

Discussion and Analysis of Nigeria's Affirmative Action

This paper 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 that 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? This is a binary question that requires two answers.

To answer the first part of the question, affirmative action vis-a-vis women's representation in the cabinet would not, in itself, lead to mainstreaming unqualified women. Nigeria has a pool of meritorious women who are well-qualified for public roles, which the state can 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 periodized as a temporary remedial measure. The recent Supreme Court judgment in the United States overturning the decades of precedent supporting affirmative action in college admission for disadvantaged ethnic minority groups is a classic example of the temporariness of affirmative action (Mangan, 2023).

While religion is said to be a factor that debars women from making it to cabinet offices and other high-ranking positions in government, this is not always the case as Table 1 reveals. Two northern states (Kwara and Kaduna) were able to achieve 35% affirmative action and even beyond

despite having a significant number of Muslim-religion adherents. 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. Besides, Delta is a Christian-dominated state. Although Okowa promised to include women in his subsequent appointments, he did not fail to reveal that pressure from local governments was the reason for the gender imbalance. In fulfillment of his promise, in 2021, Governor Okowa swore in 18 (eighteen) Commissioners out of which five (5) are women. Then, in response to the criticism on poor representation of women, he said; “the resolve for more female visibility (and participation) in politics and governance was a deliberate attempt at enhancing women's participation in decision-making process in government” (Onabu, 2021, para. 2).

Also, when Bauchi State under Governor Isa Yuguda insisted on appointing a man as Commissioner for women's 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 politics. While it is true that violence steers women away from politics (especially the core power struggle), it has nothing to do with their representation in cabinet offices. Cabinet positions are not elective positions that require fierce contest, as members are appointed, not elected. Sexist attitudes are major challenges which, according to Kelly (2019), are sometimes but not always derived from religion, traditional practices, and 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. Men 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 getting involved in politics. Nigerian politics is mannish and culturally considered unwomanly (Salaudeen, 2023). It characteristically involves “thuggery, night meetings at private homes, blackmailing and rigging” (Ikpeze, 2011, p. 171).

When women, against all odds, eventually participate in politics, they are most relevant on the fringe of the political arena as mobilizers, 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 colors 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, p. 7), “often delegated to decorative offices”—that is, in deputizing capacity. To address these challenges, gender affirmative action policy becomes very handy. Therefore, the National Gender Policy which positively recommends 35 percent for women in all appointments is a laudable intervention.

However, 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 the 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. Abimbola et al. (2023, p. 9) aver that the Constitution of Nigeria (1999), though recognized as binding on all Nigerians, its practical enforcement in challenging some social issues seems to make it a toothless bulldog in the face of the overwhelming patriarchal structures in Nigerian women political representation. 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.

That is why in April 2022, Nigerian women took the case of the Nigerian government's non-implementation of the 35 affirmative action to the Federal High Court. The Abuja Division of the Federal High Court on the matter filed by the Women in Politics Forum (WIPF) against the federal government ruled in favor of the 35 percent affirmative action for appointments of more women into public offices. According to the judgment: "Formulating policies based on sex, stereotyping, feudal and patriarchal traditions will no longer be tolerated due to the supremacy of constitutional values." (Ejekwonyilo, 2022, para. 14).

The Court said the government had an obligation to implement the 35 percent affirmative action, accusing previous administrations of breaching international treaties on women's participation in government. This

judgment would have been a great victory in the struggle for women's inclusiveness by making the implementation of the 35 percent affirmative action of the National Gender Policy legally binding, but it is not coming from the Supreme Court. The judgment is thus appealable. As expected, the Nigerian Government appealed the judgment compelling it to reserve 35 percent of public offices for women (Sahara Reporters, 2022). The case will likely be pushed to the Apex Court soon if the government does not reverse its steps. Would it favor the Women in Politics Forum in the end? Only time will tell. The National Gender Policy affirmative action and the ensuing legal tussle it sparks is an ironic case of government against itself—its brainchild, Affirmative Action.

Conclusion and Recommendations

This paper discussed gender affirmative action within the context of the Nigerian milieu where discrimination against women has been institutionalized. The point is, should justice prevail, there must be restitution for victims of discrimination. This is the core logic of affirmative action—that is, accommodating everyone. Though affirmative action addresses marginalized groups generally, this paper focuses on how Nigerian women are marginalized vis-a-vis participation in politics at the level of cabinet positions. It also explained why it has always been herculean for women to make it to the cabinet—both at state and national levels. The paper also highlighted some of the hurdles 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 occasionally narrowed their participation to the fringe due to challenges like poverty, poor literacy rate, violence in the political arena, religion, stereotyped gender roles, and women's inhumanity to women, among others.

The paper also noted that the 35% Affirmative Action for women in Nigeria has not been achieved for over 17 years since the formulation of the National Gender Policy, even though several African countries have made progress. For instance, countries like Algeria, Benin, Cameroon, Comoros, Congo, Djibouti, DRC, Kenya, Morocco, Niger, Rwanda, Senegal, and Togo (all in Africa) are among those that have passed legislation and adopted national policies mandating gender parity in executive, legislative, and judicial branches, using legislative quotas. Also, 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 (African Union, 2022).

This paper finds that the most problematic of all the obstacles on the trajectory of women's actualization of their political dream in Nigeria are patriarchy and constitutional barriers. It is not that the 1999 Nigerian Constitution is apparently against women's participation in politics, but due to patriarchal influence, its provisions are too general to address these specific gendered socio-political challenges. A quote from Aina-Pelemo's work (2023, p. 110) best describes the government's action. In her words; "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."

The paper then concludes that until affirmative action is domesticated, its implementation will be at the mercy of the disposition of the government in power for the appointment of more women into Cabinet and other key political positions. The paper then recommends that the Nigerian government should institutionalize support for women in government which it has successfully organized through the implementation of the 35 percent

affirmative action—a prescription of a policy it willingly drafted but failed to implement. The government should also engage in constitutional reforms that will positively address women in politics question. This will facilitate the implementation of gender policies as evident in other African countries. Lastly, the Nigerian government should make laws that will compel political parties to comply with the affirmative action policy requirements for more women's inclusion in politics.

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