APPRAISING GENDER AND HUMAN RIGHTS IN NIGERIA: LEGAL PERSPECTIVE

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Abstract

The concept of human rights is as old as human history itself. Different civilizations have derived some measure of human rights from religious documents, considering such "natural" rights as emanating directly from a superior being. Historically, entitlement to those rights was often limited in scope because women were often excluded from the enjoyment of certain rights even though by its very own concept, there shouldn't be any limitation to the enjoyment of human rights since women were humans too. Sadly, these limitations still exist till date. Women still do not enjoy the full protection and benefits of human rights as provided by the various Human Rights Instruments in existence. The objective of this paper is to analyze the prevalence of gender inequality in Nigeria. This paper adopted a theoretical framework by looking at other literature on the subject as basis for our findings and recommendations. Our findings reveal that not notwithstanding the express provisions of the Constitution and the various human rights instruments which have been domesticated in Nigeria, the existence of gender-based discrimination is on the increase especially as it relates to property rights of women. It is therefore our recommendation that measures to achieve gender equality must go beyond identical treatment of women but should be with the ultimate view to achieving equal enjoyment of rights, income levels and participation and influence in decision-making, as well as freedom from violence for both, women and men.

Key Words: Human Rights, Gender, Gender Inequality, Discrimination.

1. Introduction

Human Rights concept is based on natural law which has never been constant, but predicated on natural rights laced into four periods[1]. There are many recognized Human Rights; many are contained in the various human rights instruments and also contained in the various municipal laws and in our own case, chapters II and IV of the 1999 Constitution (as amended). Gender as a concept refers to the social roles ascribed to women and men. They are learned not natural and as such, varies from culture to culture[2]. Many a time, at the mention of "gender", many concepts come to mind, chief among them being discrimination against women. Indeed, the concept of gender refers to socially constructed identities, attributes and roles for women and men, and the social and cultural meaning attached to biological differences between women and men that result in hierarchical relationships between women and men and in an unequal distribution of power and rights that favors men and disadvantages women. Human rights on the other hand have been defined as rights innate in every human being by virtue of our humanity. This definition presupposes that equal rights for all should be the guiding principle for all activities and decisions. There exist many International and regional human rights instruments which said instruments and provisions as contained in the various municipal laws were elegantly drafted to ensure that all human beings are accorded rights and corresponding obligations.

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[1]O. Charhan *"Human Rights:Promotion and Protection" (*Anmol Publication P. V. T Ltd, 2001) cited in C. Arinze-Umobi, O Ikpeze "*Gender Rights Law in Nigeria"(* Folmech Printing and Publishing Co. Ltd)p.67

[2] O. Ikpeze "*Gender Dynamics of Inheritance Rights in Nigeria"*(Folmech Printing and Publishing Co. Ltd)p.30

The various human rights instruments can best be described as obligatory code of conduct for all regardless of position or gender. This is perhaps the reason and drive behind the modern advocacy for rights-based approach to gender equality and enforcement of human rights provisions in the various United Nations human rights instruments, regional instruments and the various domestic laws of member nations.

The Vienna Declaration and Programme of Action stated that women's rights are an intrinsic dimension of human rights. It also identified gender-based violence as a subject of international human rights law. The Beijing Platform for Action builds on the Vienna results concerning the human rights of women. Among the critical areas of concern covered in the Platform are human rights of women, violence against women, and women and armed conflict. The full range of rights is addressed in other sections of the document, in particular in areas such as women and the economy, women and poverty, women and health, and the girl child. The International Conference on Population and Development (1994, Cairo) and the World Summit for Social Development (1995, Copenhagen) also integrate human rights in general, and gender equality as a human right.

2. Gender and Human Rights

Gender inequality generally depicts the subordination of women by men. Scholars have posited that gender refers to the stereotyped roles ascribed to the sexes as men and women which are basically acquired yet vary from culture to culture. A renowned women's rights scholar and advocate stated that gender as a concept influences distribution of power, status, access to economic resources such as land or landed property between the two known human social groups, that is, the males and the females[3]. R. W. Connell in his book *Gender and power* defined gender as the practice organized in terms of or in relation to, the reproductive division of people into male and female. He further noted that social relations of gender are not determined by biological difference but deal with it[4]. The import of the contemporary usage of gender as a binary categorization of masculinity and femineity is to unravel and highlight social relations of male domination of female[5]. Gender equality has become a generally accepted refrain and gained secure positioning within international approaches to, and discourse on, development and human rights. However, it took decades of advocacy for gendered diversities to become effectively acknowledged as relevant to the international human rights system. In this process, the recognition that "women's rights are human rights" played a central role[6].

The Charter of the United Nations guarantees the equal rights of women and men. All major international human rights instruments stipulate ending discrimination on the basis of sex. Almost all countries have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), described as the women's international bill of rights. Yet serious gaps and violations remain in every region of the world today and progress has been unacceptably slow, particularly for the most marginalized women and girls. Discrimination in the law persists in many countries. Women do not participate on an equal footing with men in politics. They face blatant discrimination in labour markets, access to economic assets and ownership of property. In fact, women's right to own and inherit property in Nigeria under customary law is still a thing of great controversy, especially in the eastern part of the country, despite the clear provisions of sections 42 and 43 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). This infringement is regardless of the Superior Courts pronouncement on the issue in the cases of Mojekwu Vs. Mojekwu[7],

[3] O Ikpeze "*Gender Dynamics of Inheritance Rights in Nigeria"*(Folmech Printing and Publishing Co. Ltd)pp.2,3
[4] Quoted by J Busfield, *Men, Women and Madness* (London:Macmillian press)pp 32-33 cited in Center For Law Enforcement Education's *Gender Relations And Discrimination In Nigeria Police Force* p.5
[5] Center For Law Enforcement Education's *Gender Relations And Discrimination In Nigeria Police Force* p.6
[6] www.hrea.com accessed on 22nd June, 2015
[7] [1997]5NWLR (Pt. 512)p286

Mojekwu Vs. Iwuchukwu[8], Asika Vs. Atuanya[9], Chinweze Vs. Masi[10], Sule Vs. Ajesegiri to mention but a few. Many customary practices are indeed derogatory to women and the customary practices which are still in existence today are the ones which are discriminatory to women and are geared at subjugation women. In *Mojekwu V Mojekwu*[11], Niki Tobi JCA as he then was stated that God the creator of human beings is also the final authority of who should be male or female. Accordingly, for any customary practice to discriminate against a particular sex is to say that the least an affront on the almighty God himself. The many forms of violence directed explicitly towards women and girls deny them their rights and all too often their lives. Unacceptably high levels of maternal mortality continue in some regions. Unpaid care workloads continue to limit women's enjoyment of their rights.

Women's Human Rights and Gender Equality

Gender equality is at the very heart of human rights and United Nations values. A fundamental principle of the United Nations Charter adopted by world leaders in 1945 is "equal rights of men and women", and protecting and promoting women's human right is the responsibility of all States[12]. Yet millions of women around the world continue to experience discrimination in the following under listed ways:

- Laws and policies prohibit women from equal access to land, property, and housing;
- Economic and social discrimination results in fewer and poorer life choices for women, rendering them vulnerable to trafficking;
- Gender-based violence affects at least 30% of women globally;
- Women are denied their sexual and reproductive health rights;
- Women human rights defenders are ostracized by their communities and seen as a threat to religion, honour or culture;
- Women's crucial role in peace and security is often overlooked, as are the particular risks they face in conflict situations[13].

In some cases, women face compounded forms of discrimination as a result of factors such as their age, ethnicity, disability, or socio-economic status. Discrimination based on sex is prohibited under almost every human rights treaty, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which under their common Article 3 provide for the rights to equality between men and women in the enjoyment of all rights. Indeed, many Women Rights' Groups work tirelessly to agitate and ensure that gender- based discrimination is phased out. However, despite the agitation by various human rights activists, groups, national and international communities, many are still unaware of these rights. Factors such as culture, religion etc. prevents the full actualization of these human rights provision especially as it relates to women. For instance, in the first unit of socialization which is the family, a woman is expected to be seen and not heard. If she insists on being heard, she is labeled troublesome and may essentially be thrown out. So where is the freedom of speech? In some parts of this country, in the threshold of the 21st century, wives are not allowed to take employment outside the home. So where is the freedom of movement? A woman cannot inherit property. Indeed, some highly placed but illiterate men still enunciate the drivel that a woman is the property of men. These men who unfortunately push themselves into positions of authority and power give action to such drivel. So where is the right to property? She cannot buy because she cannot obtain loan without the husband's

[8] [2004] 11NWLR (pt. 883) p196
[9] [2008]17NWLR(pt1117)484
[10] [1989] 1 SCNJ, 148
[11] *supra*
[12] www.ohcr.org. accessed on 22nd June,2015
[13] *ibid*

consent[14]. One may at this point ask the question as to the reason why women are still treated as lesser human beings. The simple reason for this is that societies have largely been characterized by the institution and practice of patriarchy. Simply put, patriarchy is the disadvantage and oppression of women; it is the male dominance and oppression to demean, diminish and exclude women[15]. Patriarchy denotes:

> the rule of the father, or more generally the rule of men… whereas the concept of gender suggest not only difference but also asymmetries and inequalities in the relation between men and women, the concept of patriarchy is used to characterize the wider social structure in which men and women are located, whether it be family with the focus on the power of the father, or the wider society where it is the power of men more generally that is emphasized. The concept consequently moves beyond concepts like sex or gender, to the level of social institution[16].

According to S. Walby, patriarchy is the system of social structures and practices, in which men dominate, oppress and exploit women[17]. Generally, the societal attitude is that, it is a man's world and the males dominate every given society. It is this barrier to ensuring and actualizing human rights of women globally. Of particular importance is that this masculine dominance fosters discrimination under patriarchy and impedes women's economic objectives[18]. Again, patriarchy is the engine behind the discrimination against women. It is rooted in every tradition. Even the religious books of law have so many of such provisions which demean women. In fact, the Talmud, a Jewish system of the Sanhedrin class, a highly placed decision -making body saw women as a great source of unhappiness and opined that

> It is written, a daughter is a vain treasure to her father, from anxiety about her, he does not sleep at night during her early years, lest she goes astray in her marriageable years, lest she dose not find a husband; when she is married, least she is a witch[19].

Similarly, the ancient male Jewish prayer in Israel which every Jewish male born was expected to say every morning goes thus: Blessed are thou who has not made me a Gentile or a slave or a woman[20].

What remains worrisome is that the positions of the slaves and the gentiles have long changed. In fact, slave are now masters in some quarters but women are yet to shed the shackles of discrimination foisted on them[21]by men under patriarchy as all laws whether customary, statutory, international, national or local are enacted by men in overwhelming majority till date[22].

Women's rights are an essential component of universal human rights. They reflect the fact that men and women have very different experiences, the fact that women and girls often face gender-based discrimination puts them at increased risk of poverty, violence, ill health and a poor education[23].

In Nigeria, we have various laws with human rights provisions, chief among them being the 1999

[14] Full text lecture paper delivered at the request of the Association of British Council Fellows at the Nigerian Institute of Advanced Legal Studies on 15 Mach, 1996. Quoted in miscellany at law and gender relations (MIJ Professional Publishers Limited, Lagos 1999. P130.

[15] Publication by Center For Law Enforcement Education's *Gender Relations And Discrimination In Nigeria Police Force* p.7

[16] J Busfield, *Men, Women and Madness* (London: Macmillian press)p35 cited in a publication by Center For Law Enforcement Education's *Gender Relations And Discrimination In Nigeria Police Force* p.7

[17] J Busfield, *Men, Women and Madness* (London: Macmillian press)p41 cited in a publication by Center For Law Enforcement Education's *Gender Relations And Discrimination In Nigeria Police Force* p.8

[18] O Ikpeze *Gender Dynamics of Inheritance Rights in Nigeria* (Folmech Printing and Publishing Co. Ltd)p31

[19] *Ibid*. p59

[20] *Ibid.* p58

[21] Oputa, C. A in a paper Women and Children a disempowered Group at idigbe memorial lectures NAILS Lagos, 1987 O Ikpeze *Gender Dynamics of Inheritance Rights in Nigeria* (Folmech Printing and Publishing Co. Ltd 2009) p59

[22] O. Ikpeze (2009) ibid p.59

[23] www.armnestyusa.org accessed on 23rd June,2015

Constitution (as amended) of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. Numerous international and regional instruments have drawn attention to gender-related dimensions of human rights issues, the most important being the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In terms of enforcement of the various provisions of human rights instruments relating to gender, such legislation and affirmative action policies have been critical to bringing about changes in societal attitudes. Most occupations are now equally available to men and women, in many countries. For example, many countries now permit women to serve in the armed forces, the police forces and to be fire fighters, occupations traditionally reserved for men. Although these continue to be male dominated occupations an increasing number of women are now active, especially in directive fields such as politics, and occupy high positions in business[24].

Notwithstanding the foregoing, the enforcement of human rights as it relates to the female gender is yet to gain monument in the areas listed hereunder:

a. **Violence against women**: Gender based violence against women include sexual violence, domestic violence, reproductive violence (which includes female genital mutilation, forced prostitution, sex trafficking, honor killings, dowry killings, acid attacks, stoning, flogging, forced sterilization, forced abortion) and mistreatment of widows. In some parts of the world, various forms of VAW are tolerated and accepted as parts of everyday life; according to UNFPA[25], in some developing countries, practices that subjugate and harm women - such as wife-beating, killings in the name of honour, female genital mutilation/cutting and dowry deaths - are condoned as being part of the natural order of things.

b. **Marriage, divorce and Marital Property**: Many women are still forced into marriages by their family. Polygamous marriage is a controversial practice, prevalent in some parts of the world especially Nigeria. Article 7 of the Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa provides for both parties of a marriage to enjoy equal rights within and after the marriage, in issues of custody and access to an equitable share of the joint property deriving from the marriage, this is not the case. The reality of women married under Customary and Islamic law has not yet been affected by the protocol. A woman married under customary law is entitled to be provided with a home by her husband as long as the marriage subsists. She is also entitled to use her husband's property but cannot dispose of it as her own. The right to be provided with a house by her husband terminates upon divorce. Upon divorce, a woman married under customary law has no claim over a house jointly owned by her husband. However, in the case of women married under the Act, where she is able to produce documents showing she made a contribution to the property, she is entitled to the part of the property commensurate to her contribution. Many women are denied custody and access to their children.

c. **Harmful cultural practices against women:** widowhood rites are practices considered as part of cleansing rituals designed to remove the bond that links a living spouse to a dead one[26]. Therefore, anyone who fails to fulfill the requirements of the rituals risks social exclusion and family or personal calamity. These widowhood rites impart negatively on the life, health and wellbeing of women. By Article 1 (j) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, violence against women was stated to include all acts perpetuated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts or to undertake the imposition of arbitrary restrictions on or deprivation of

[24] www.wikipedia.org accessed on 25th June,2015

[25] "Gender equality - UNFPA - United Nations Population Fund" cited in www.wikipedia.org accessed on 25th June,2015

[26] O Ojigho, "*Africa culture and human rights in Nigeria: violence and widowhood*"being an article written for the series "culture and human rights:challenging cultural excuses for gender-based violence" www.genderacrossborders.com accessed on 21st June,2015

fundamental freedoms in private or public life in peace times and during situations of armed conflicts or of war. When violence is directed against a woman or where such violence affects women disproportionately, it is known as violence against women[27]. Widows suffer a disproportionate form of ritual cleansing compared to widowers in Igbo culture. All widowhood practices are harmful and a deliberate infringement on the rights of women which said widowhood practices are clear contradictions to the provisions of Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Again, despite the enactment of the above law by Anambra State and similar laws in other eastern States, widowhood rotes are still very much practiced in the States.

d. **Right to Inherit:** The right of women to inherit properties in Nigeria differs with custom. Under the Yoruba custom, as it stands now, the children of a deceased intestate father inherit equally and absolutely whether male or female to the exclusion of every person. Also, married women can acquire and deal with their own property freely. However, with respect to her husband's property, she only has a possessory right and no more. She can neither inherit her husband's property nor take a share in his estate. Under the Hausa customary law young males and female children were not entitled to inherit from their deceased father's estate as was held in *Mohammadu v Mohammadu*[28]. The females are themselves the object of inheritance. Only adult sons and brothers were entitled to inherit. Females can only inherit the moveable property of their mothers. Land owned by females can only be inherited by the males within a family[29].

Under the Igbo customary law, a deceased father's property is inherited by his sons with the first son taking the lion share. The daughters do not inherit. If the dead man does not have any surviving male children, his male brothers or uncles to the exclusion of the dead man's wife and daughters (if any). The first son as the Di Okpala dictates how and when the deceased father's property will be shared. The Di Okpala also dictates whom to allocate lands to and which land is to be allocated. The female children can live and use parcels of land allotted to them by their brothers pending the reversion of such allotment by such brothers. Also, widow's right of inheritance is non-existent. Although the Courts in Nigeria have become a little bit sensitive and now views these customary provisions against the rights of women as injustice meted out by men as was seen in *Ukeje v Ukeje***,** where it was held that no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Interestingly, under the Igbo native law, the widower of a deceased woman is entitled to inherit his deceased wife's property. The Supreme Court in the case of *Nazianya v Okagbue*[30] further held that a married woman's property rests in her husband except the property she acquired before marriage which will reside in her family whether male or female.

Conclusion

From the foregoing, it can be seen that despite the existence of domestic and International Legal Instruments in Nigeria, the denial of women's basic human rights is persistent and widespread. Women continue to die each year from pregnancy and childbirth-related causes, gender-based violence against women is still prevalent, and most perpetrators go unpunished. Similarly, despite the ratification of CEDAW, there are still discriminatory laws and customs governing marriage, land, property and inheritance in existence. Nigerian women do not participate on an equal footing with men in politics. They face blatant discrimination in labour markets and access to economic assets. The many forms of violence directed explicitly towards Nigerian women and girls deny them their rights and all too often their lives. Unpaid care workloads continue to limit women's enjoyment of

[27] Recommendation 19(a) of the general recommendation of the committee on the elimination of discrimination against women
[28] [2002] NWLR (pt 708) p 104
[29] O Ikpeze *Gender Dynamics of Inheritance Rights in Nigeria* (Folmech Printing and Publishing Co. Ltd 2009)p145
[30] *supra*

their rights. It is therefore our recommendation that harmful gender stereotypes must be dismantled, so that women are no longer viewed in the light of what women "should" do and are instead seen for who they are: unique individuals, with their own needs and desires. Also, State measures to achieve gender equality must go beyond identical treatment of women and men as being equal before the law. Instead, laws and policies must aim at equal opportunities of women with men, with the ultimate view of achieving equal enjoyment of rights, income levels and participation and influence in decision-making, as well as freedom from violence for both, women and men. This requires effective strategies aimed at overcoming gender-based stereotypes and other root causes of discrimination, with a view to a redistribution of resources and power between men and women in line with CEDAW GR 25.